IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

NO. 79-546

HOME FEDERAL SAVINGS AND LOAN ASSOCIATION OF HOLLYWOOD,

Appellant,

V.

CHEMICAL REALTY CORPORATION,

Appellee.

On Appeal from the Supreme Court of the state of North Carolina Dismissing Appellant's Appeal and Denying its Petition for Certiorari

McCoy, Weaver, Wiggins, Cleveland & Raper
222 Maiden Lane
Fayetteville, N.C. 28302

John E. Raper, Jr.
Richard M. Wiggins
Attorneys for Appellant

APPELLATE PRINTING SERVICES, INC., HERITAGE BLDG., RICHMOND, VA. (804) 643-7789

INDEX

Jurisdictional Statement	1
Opinions Below	1
Jurisdiction	2
Constitutional Provisions and Statutes	8
Questions Presented.	11
Statement of the Case	12
The Questions Presented are Substantial	19
Conclusion	50
Appendix A	A1
Appendix B	A3
Appendix C	A11
Appendix D-1	A14
Appendix D-2	A15
Appendix E-1	A20
Appendix E-2	A24
Appendix E-3	A26

TABLE OF CITATIONS.

Cases:	Pages
American Motorists Ins. Co. v. Starnes, 425 U.S. 637 (1976)	5,6,7
Byham v. Nat'l Cibo House Corp., 265 N.C. 50, 143 S.E.2d 225 (1955)	33
Crabtree v. Coats & Burchard Co., 7 N.C. App. 624, 173 S.E.2d 473 (1970)	34
Equity Assocs. v. Soc. for Savings, 31 N.C. App. 182, 228 S.E.2d 76 (1976)	36,37,44
Erlanger Mills v. Cohoes Fibre Mills, 239 F.2d 502 (4th Cir. 1956)	41
Golden Belt Mfg. Co. v. Janler Plastic Mold Corp., 281 F.Supp. 368 (M.D.N.C. 1967)	28
Hanson v. Denckla, 375 U.S. 235 (1958)	22,23,24,28,29
International Shoe Co. v. Washington, 326 U.S. 310 (1945)	21,22,23
Koppers Co., Inc. v. Chemical Corp., 9 N.C. App. 118, 175 S.E.2d 761 (1970)	33
Kulko v. Superior Court, 435 U.S. 84 (1978)	24,25
Local No. 438 Constr. and Gen. Laborers' Union v. Curry, 371 U.S. 542 (1963)	4
McGee v. Int'l Life Ins. Co., 355 U.S. 220 (1957)	23
Mercantile Nat'l Bank v. Langdeau, 371 U.S. 555 (1963)	4,7,8

N.C.G.S., §55-145 6,49
N.C.G.S., §55-145(a)(1) . . .10,12,18,
20,33,34,35,40,41,42,43,44,46,48,49
North Carolina Rules of
Civil Procedure 12(b) 6

United States Constitution,
Article 1, Section 8, Clause 3. . 8
United States Constitution,
Article 6, Clause 2 9
United States Constitution,
Fourteenth Amendment 9,12

Miscellaneous:

Charawell, Shaffer v. Heitner:
A Single Standard for Acquiring Jurisdiction and Its Implications in Idaho, 15 Idaho L. Rev. 141 (1978). . . . 22
Colston, Corporations-
Jurisdiction over Foreign Corporations Not Qualified to Transact Business in North Carolina, 44 N.C. L. Rev. 457 (1966) 36
9 John Marshall Jour. of
Practice and Procedure
295 (1976). 38
Norman, Jurisdiction Before
and After Shaffer v.
Heitner, 19 Santa Clara
L. Rev. 217 (1979). 24
The Restatement (Second),
Conflict of Laws, §189,
comment b (1971). 38
1978 Wash. U.L.Q., No. 4,
797 24

Munchak Corp. v. Caldwell, 25 N.C. App. 652, 214 S.E.2d 194 (1975). 34,35
Munchak Corp. v. Riko Enterprises, Inc., 368 F.Supp. 1366 (M.D.N.C. 1973). 31
Nytco Leasing, Inc. v. Dan-Cleve Corp., 31 N.C. App. 634, 22 S.E.2d 559 (1976). . 44,45,48
Piracci v. New York City Employees Retirement Sys., 321 F.Supp. 1067 (D. Md. 1971) 25,26,27
Rosenblatt v. Am. Cyanamid Co., 86 S.Ct. 1 (1965) . . . 4,5
Shaffer v. Heitner, 433 U.S. 186 (1977) 12,22,23,24,41
Staley v. Homeland, 368 F.Supp. 1344 (E.D.N.C. 1974). 29,30
Telerent Leasing Corp. v. Equity Assocs., Inc., 36 N.C. App. 713, 245 S.E.2d 229 (1978) 35,36
United Advertising Agency, Inc. v. Robb, 391 F.Supp. 626 (M.D.N.C. 1975). 29
William R. Andrews Assocs. v. Sodi Bar Syss. of D.C., Inc., 28 N.C. App. 663, 222 S.E.2d 922 (1976) cert den'd, 289 N.C. 726 (1976) 32,33
Willis Bros., Inc. v. Ocean Scallops, Inc., 356 F. Supp. 151 (E.D.N.C. 1972). 45,48

Statutes:

28 U.S.C. §1257(2) 2,3,4,6,7,8
N.C.G.S., §1-75.4. 11,17,31,49
N.C.G.S., §55-131. .9,11,40,41,42,43,49
N.C.G.S., §55-144. 11,49

JURISDICTIONAL STATEMENT

The Supreme Court of North Carolina, by Judgment entered and certified on July 5, 1979, dismissed appellant's appeal from the judgment of the Court of Appeals of the State of North Carolina, filed on April 17, 1979, and certified on May 7, 1979, and denied the petition for discretionary review filed alternatively by appellant.[1] The judgment of the North Carolina Court of Appeals affirmed the denial by the Superior Court of Buncombe County, North Carolina, of appellant's motion to dismiss for lack of jurisdiction over the person of appellant. Appellant submits this jurisdictional statement to show that this Court has jurisdiction and that substantial questions are presented.

OPINIONS BELOW

The North Carolina Supreme Court's judgment dismissing appellant's appeal and denying appellant's petition for discretionary review is reported without opinion at 297 N.C. 612, ___ S.E.2d ____ (1979). A copy of said judgment

---

1 The dismissal by the North Carolina Supreme Court of appellant's appeal and denial of its petition for discretionary review thus resulted in the full effectiveness and finality of the North Carolina Court of Appeals' decision, no further review thereof being possible in the North Carolina courts.

of the North Carolina Supreme Court is attached hereto as Appendix A.

The opinion of the North Carolina Court of Appeals on which this appeal is based is reported at 40 N.C. App. 675, 253 S.E.2d 621 (1979). A copy of said opinion of the North Carolina Court of Appeals is attached hereto as Appendix B.

JURISDICTION

This proceeding is in the nature of an appeal from a final judgment of the North Carolina Supreme Court, the highest Court in North Carolina in which a decision could have been and was had in the instant case. In this appeal the validity of the application of a North Carolina statute to the jurisdictional facts of this case is challenged on the ground that to apply same in this case would violate the due process clause of the Fourteenth Amendment to the Constitution of the United States. The decision of the North Carolina Supreme Court dismissing appellant's appeal from the judgment of the North Carolina Court of Appeals is in favor of the validity of the application of said statute to the facts of this case.

This proceeding is brought pursuant to 28 U.S.C. §1257(2).

The judgment of the North Carolina Supreme Court involved herein was entered and certified on July 5, 1979. Said judgment, by dismissing appellant's appeal and denying its petition for

discretionary review, affirmed the opinion of the North Carolina Court of Appeals, which was filed on April 17, 1979, and certified on May 7, 1979.

There has been no order issued or entered for a rehearing.

The notice of appeal herein was filed on September 19, 1979, with the North Carolina Court of Appeals, the court possessed of the record, and the North Carolina Supreme Court. A copy of said notice of appeal is attached hereto as Appendix C.

Appellant respectfully submits that jurisdiction of this appeal is conferred on this court by 28 U.S.C. §1257(2) which provides as follows:

> §1257. State courts; appeal; certiorari. - Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> . . . .
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

Jurisdiction under this section is based on the ground that the decision below upheld the validity of a state statute against a claim that it

is repugnant to the Fourteenth Amendment of the Constitution of the United States and that a final judgment of the highest court of the state in which a decision could be had has been rendered. The following cases support appellant's contentions in this regard:

Rosenblatt v. Am. Cyanamid Co., 86 S.Ct. 1 (1965), provides compelling support for this court's jurisdiction of this appeal. There the appellant contested personal jurisdiction on the ground of violation of due process by a pre-trial motion to dismiss. An order of the New York Supreme Court denied this motion. Upon appeal to the Appellate Division, the order of the trial court was affirmed. In an appeal thereafter to the New York Court of Appeals, that court affirmed the decision of the lower court without opinion. The Court of Appeals later amended its order to clarify that it had passed upon and rejected appellant's constitutional claim. The United States Supreme Court, in sustaining appellant's appeal pursuant to 28 U.S.C. §1257, held that the judgment below was final for purposes of review by this court, relying on Mercantile Nat'l Bank v. Langdeau, 371 U.S. 555 (1963), and Local No. 438 Constr. and Gen. Laborers' Union v. Curry, 371 U.S. 542 (1963). The rationale which this court stated in its Rosenblatt opinion as support for its determination of finality equally supports this court's jurisdiction over this appeal:

> ...(1) [A] final assertion of jurisdiction, with no further

> review of that issue possible in the state courts; (2) a threat of serious erosion of national policy (here, the due process right against subjection to excessive state assertions of in personam jurisdiction); and (3) a state judgment on an issue anterior to and separable from the merits and not enmeshed in the factual controversies of the case.... These cases rest upon the premise that a litigant should not be forced to take the risk of a default judgment in order to obtain the benefits which national policy --- in Curry, federal pre-emption of unfair labor practice cases; in Langdeau, a special venue statute for national banks; here, if appellant is correct, due process --- is designed to afford him. Rosenblatt v. Am. Cyanimid Co., supra at p. 3.

Just as the judgment in Rosenblatt was deemed a proper subject of appeal for review by the United States Supreme Court, the judgment of the North Carolina Supreme Court herein is a proper subject of appeal to and for review by this court.

In the case of American Motorists Ins. Co. v. Starnes, 425 U.S. 637 (1976), a pre-trial venue determination was appealed to the Texas Court of Civil Appeals. Appellant therein charged that a Texas venue statute contained excep-

tions that violate the equal protection clause of the Fourteenth Amendment to the United States Constitution. The Texas Court of Civil Appeals affirmed the pre-trial venue determination and held that the venue statute in question was not void and unconstitutional. The appellant then applied to the Supreme Court of Texas for a writ of error. That application was dismissed by the Supreme Court of Texas "for want of jurisdiction." The United States Supreme Court noted probable jurisdiction, holding thereby that the judgment for which review was sought was final for the purposes of 28 U.S.C. §1257(2).

The procedural history of the instant appeal in the North Carolina courts has been practically identical to that in American Motorists Ins. Co. v. Starnes, ibid. Appellant herein appealed to the North Carolina Court of Appeals from the pre-trial order of the Buncombe County Superior Court, which denied appellant's Rule 12(b), N.C. R. Civ. Proc., motion to dismiss for lack of in personam jurisdiction of the North Carolina courts over appellant. The North Carolina Court of Appeals upheld under N.C.G.S., §55-145, the determination of the trial court allowing assertion of personal jurisdiction over appellant, notwithstanding appellant's argument to that Court that the assertion of jurisdiction over it violated the due process clause of the Fourteenth Amendment because appellant had insufficient contacts with North Carolina. Appellant then appealed to the Supreme Court of North Carolina and alternatively

petitioned that court for discretionary review of the decision of the Court of Appeals. The North Carolina Supreme Court dismissed appellant's appeal and denied its petition for discretionary review. This court determined in American Motorists Ins. Co. v. Starnes, ibid., that, based on procedural history parallel to that herein, the judgment for which review was sought was final for purposes of 28 U.S.C. §1257.

In a footnote to the finding of probable jurisdiction in American Motorists Ins. Co. v. Starnes, ibid., the Court stated that the judgment before the Court was deemed final for the reasons stated in Mercantile Nat'l Bank v. Langdeau, supra at p. 558, as follows: (1) that the venue question was separate, independent and anterior to the merits of that case and not enmeshed in the factual and legal issues of plaintiff's case therein; and (2) that the policy underlying the §1257(2) requirement of finality would be served by determining prior to trial on the merits the proper court in which suit could be brought rather than deferring such determination until the complex litigation had been completed in a possibly incorrect venue, causing such litigation thereby to have been in vain.

In the instant appeal, the lawsuit alleges a breach of a purported agreement between appellant and appellee under which appellant was either to make a permanent loan to a borrower (not a party to this case) or to "take-out" appellee's construction loan to said borrower. The question of personal jurisdiction over the person of

the appellant is thus separate, independent and anterior to the merits of appellee's lawsuit. Even more compelling is the fact that a complete determination as to jurisdiction of the North Carolina courts over the person of appellant herein would serve the policy underlying the §1257(2) requirement of finality to a greater degree than the determination of venue in the above cited cases. As in Mercantile Nat'l Bank v. Langdeau, ibid., an adjudication by the United States Supreme Court in this appeal would determine whether the North Carolina courts had jurisdiction, and, if not, in which jurisdiction the case should proceed on the merits. If this court should determine that the North Carolina courts lacked jurisdiction over appellant, appellee's attempt to bring its lawsuit in North Carolina would be terminated, whereas in Mercantile Nat'l Bank v. Langdeau, ibid., the decision merely determined in which district of the state court system the lawsuit properly lay. Termination of the litigation was not a possibility as it is in this case.

The cases previously decided by this court sustain the jurisdiction of and this appeal to the United States Supreme Court as to the judgment at issue herein.

CONSTITUTIONAL PROVISIONS AND STATUTES

Article 1, Section 8, Clause 3, United States Constitution:

> The Congress shall have Power . . . .

To regulate Commerce . . ., among the several States, . . .;

Article 6, Clause 2, United States Constitution:

> This Constitution and the Laws of the United States which shall be made in pursuance thereof; . . . , shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Fourteenth Amendment, United States Constitution:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

North Carolina General Statutes, Chapter 55, Business Corporation Act; Article 10, Foreign Corporations:

> §55-131. Right to transact business. . . (b) Without excluding other activities which may not

> constitute transacting business in this State, a foreign corporation shall not be considered to be transacting business in this State, for the purpose of this Chapter, by reason of carrying on in this State any one or more of the following activities:
>
> . . . .
>
> (6) Making or investing in loans with or without security including servicing of mortgages or deeds of trust through independent agencies within the State . . . .
>
> (7) Taking security for or collecting debts due to it or enforcing any rights in property securing the same . . . .
>
> . . . .
>
> (9) Conducting an isolated transaction completed within a period of six months and not in the course of a number of repeated transactions of like nature. (Emphasis added.)

North Carolina General Statutes, Chapter 55, Business Corporation Act; Article 10, Foreign Corporations:

> §55-145. (a) Every foreign corporation shall be subject to suit in this State, whether or not such foreign corporation is transacting or has transacted business in this State and whether or not it is

> engaged exclusively in interstate or foreign commerce, on any cause of action arising as follows:
>
> (1) Out of any contract made made in this State or to be performed in this State; . . . .

Although other "long-arm" statutory provisions are contained in §§55-144 and 1-75.4 of the North Carolina General Statutes, these statutes would not appear applicable to the facts in this appeal and are not set out herein, because the North Carolina Court of Appeals did not base its decision upon or refer to said statutes in its opinion. These statutes are attached as Appendices D-1 and D-2.

QUESTIONS PRESENTED

I

Where neither appellant nor appellee were residents of nor licensed to transact business in North Carolina, does appellant have the requisite "minimum contacts" with North Carolina to satisfy the requirements of the due process clause of the Fourteenth Amendment to the United States Constitution for assertion of personal jurisdiction over it by the North Carolina courts?

II

Where North Carolina by statute (N.C.G.S., §55-131(6)) has specifically provided that the making of a loan with security by a foreign corporate lender shall not be considered to be transacting

business in said state under Chapter 55, does the assertion by the North Carolina courts of personal jurisdiction under N.C.G.S., §55-145(a)(1), over appellant, a foreign corporate lender, violate the "fairness" requirement of the due process clause of the Fourteenth Amendment to the United States Constitution enunciated in Shaffer v. Heitner?

III

Does N.C.G.S., §55-145(a)(1), provide a statutory basis for the assertion by the North Carolina courts of personal jurisdiction over appellant, where its only contact with North Carolina has been the issuance of a loan commitment and the making of a loan, both of which were solicited from it by an independent contractor representing the respective borrowers as a broker and made by it from Florida?

STATEMENT OF THE CASE

In this case, a New York corporation, Chemical Realty Corporation (hereinafter referred to as appellee or Chemical), has instituted suit in the Superior Court of Buncombe County, North Carolina, against Home Federal Savings and Loan Association of Hollywood (hereinafter referred to as appellant or Home Federal), a federal savings and loan association organized under the Acts of Congress with its principal office in Hollywood, Florida. Chemical's complaint sets forth a claim for relief based on Home Federal's alleged failure either to purchase the construction loan from Chemical which it made to the owner of the Landmark Hotel in Asheville, North

Carolina, or to extend the term of its commitment to provide permanent financing for said Landmark Hotel. Both failures are alleged to have occurred on October 14, 1974, in Hollywood, Florida. Chemical's complaint also alleges that it is suing as the third-party beneficiary of an agreement between its borrower (Landmark Hotel, Inc., successor to Asheville Development Associates) and Home Federal.

Thus, a New York lender (Chemical) is suing a Florida lender (Home Federal) in Buncombe County, North Carolina, for alleged breaches of duty by the Florida lender which occurred in Florida arising out of an agreement intended to have been consummated in Florida to which agreement Chemical was not a party but an alleged third-party beneficiary. Neither Chemical nor Home Federal is a North Carolina resident or licensed to do business in this State. The alleged agreement in question was not to be performed in North Carolina, and the alleged breaches thereof did not occur in North Carolina.

The permanent loan commitment at issue herein was solicited by Atlantic Mortgage and Investment Company of Winston-Salem, North Carolina (hereinafter referred to as Atlantic Mortgage) in the early spring of 1972. The initial contact regarding this commitment was made by Atlantic Mortgage at Home Federal's office in Hollywood, Florida. The terms and conditions of this commitment were negotiated in Hollywood, Florida and by telephone between Thomas M. Wohl of Home Federal

in Florida and J. P. Lauffer of Atlantic Mortgage in North Carolina, according to the deposition testimony of the two principals of said negotiations, Thomas M. Wohl and J. P. Lauffer. Some of the terms of the proposed loan commitment were discussed and negotiated at a meeting in Asheville, North Carolina, between Wohl, Lauffer and Earl Crawford of the North Carolina investment partnership which was undertaking the hotel project.

After the terms of the commitment had been negotiated and agreed upon, Thomas Wohl of Home Federal prepared the permanent loan commitment letter, dated April 14, 1972, and delivered this letter in Florida to Atlantic Mortgage for forwarding to Crawford for approval and execution by him. See Appendix E-1. The last two sentences of the letter provided that the permanent loan commitment would be deemed accepted when received by Home Federal in Hollywood, Florida, with the commitment fee. Mr. Crawford of Asheville Development Associates, the partnership undertaking the hotel project, signed said permanent loan commitment letter but returned it to Michael Burroughs of Atlantic Mortgage with a cover letter dated May 15, 1972, in which he requested certain changes in the permanent loan commitment. See Appendix E-2. Home Federal contends that this constituted a conditional acceptance by the borrower of Home Federal's offer to make a permanent loan commitment and was, therefore, a counter-offer. In response to Earl Crawford's counter-offer as contained in said May 15, 1972 letter, Thomas M. Wohl of Home Federal accepted

the conditions of the counter-offer by his May 24, 1972 letter to J. P. Lauffer of Atlantic Mortgage. See Appendix E-3. The May 24, 1972, letter from Home Federal signified a final meeting of the minds on the terms of the permanent loan commitment and was executed at the offices of Home Federal in Hollywood, Florida, and delivered or mailed therefrom to representatives of Atlantic Mortgage or Earl Crawford.

Thereafter, representatives of Home Federal wrote seven letters from its office in Hollywood, Florida, to persons located in North Carolina relative to its permanent loan commitment. Representatives of Home Federal visited North Carolina on four separate occasions in connection with the permanent loan commitment.

The permanent loan commitment was offered and accepted by the borrower six or seven months before Chemical made its construction loan commitment. Chemical was not involved in any of the negotiations between the borrower and Home Federal.

Home Federal's only other contact with North Carolina was in connection with a permanent loan commitment which it made to Carl J. Beacham and wife, Helen B. Beacham, on the Beacham apartments located in Jacksonville, North Carolina, more than four years prior to the commencement of this lawsuit. Pursuant to a solicitation made by Atlantic Mortgage in Hollywood, Florida, Home Federal issued from its home offices in Hollywood, Florida, a letter dated

November 29, 1972, offering to commit to provide permanent financing to Mr. and Mrs. Beacham for the Beacham apartments to be constructed. Subsequently, representatives of Home Federal visited North Carolina on one occasion in connection with said commitment. Home Federal entered into a servicing agreement with Atlantic Mortgage as an independent contractor to service said loan as required by the regulations of the Federal Home Loan Bank. The permanent loan to Mr. and Mrs. Beacham was closed by a Hollywood, Florida law firm retained by Home Federal and a North Carolina law firm associated by said Hollywood, Florida law firm.

Home Federal has had no other contacts with North Carolina. The main office of Home Federal is located at 1720 Harrison Street, Hollywood, Florida, and all corporate books and records concerning the business operations and activities of Home Federal are kept and maintained at that office. Home Federal has no certificate of authority to transact business in North Carolina, nor has it applied for any such authority; it does not have or maintain any registered office in the State of North Carolina; and it has not appointed any agent or other person upon whom process, notice or demand may be served upon it in North Carolina as required or permitted by law. Home Federal does not transact business in North Carolina within the meaning of any of the statutory sections of Chapter 55 of the North Carolina General Statutes. Furthermore, Home Federal has not engaged in any of the activities or transactions which would give rise

to jurisdiction over it in North Carolina under the provisions of N.C.G.S., §1-75.4.

Chemical Realty is a New York corporation engaged during the times referred to herein primarily in the business of making construction loans, with its principal offices located in New York, New York. It is not and never has been authorized to transact business in North Carolina and does not have an agent or place of business in North Carolina.

In addition to Home Federal's contention that the contract at issue was made in Florida, Home Federal would also highlight the fact that the alleged breach of the permanent loan commitment is alleged to have occurred in Hollywood, Florida, in the offices of Home Federal, which was the place where performance under the terms of the commitment was contemplated.

With this factual background as to contacts with and/or activities within or the lack thereof, North Carolina, Home Federal following its receipt of notice of Chemical's complaint filed a motion to dismiss on the ground, inter alia, that the North Carolina courts lacked personal jurisdiction over it. Its motion was filed on January 19, 1977, and a hearing on this and other motions before the court in this case was held before a resident Superior Court judge on August 26, 1977 in Buncombe County, North Carolina. By order of October 1, 1977, the trial court denied said motion to dismiss for

lack of jurisdiction over Home Federal. On that same day, a notation was entered on the order indicating Home Federal's exception and objection to the signing and entry of the order and also indicating Home Federal's oral notice of appeal as given by its attorney of record. Home Federal timely filed its appeal to the North Carolina Court of Appeals in which appeal Home Federal assigned as error the trial court's denial of its motion to dismiss for lack of jurisdiction over it.

In an opinion filed on April 17, 1979, the North Carolina Court of Appeals ruled that ". . . .G.S. 55-145(a)(1) applies to give the North Carolina courts personal jurisdiction over Home Federal." Further, in addressing Home Federal's arguments that such assertion of jurisdiction would violate due process requirements and protections, the Court stated:

> Home Federal next contends that even if the statutory standards for jurisdiction are met, the constitutional requirements of due process are not. This contention is untenable . . . . Due process is satisfied.

Thus the long-arm statutory provision contested by Home Federal as being unconstitutional was deemed valid by the North Carolina Court of Appeals.

From the opinion of the North Carolina Court of Appeals, Home Federal

appealed to the North Carolina Supreme Court, the highest court of the state. Additionally, Home Federal alternatively petitioned the North Carolina Supreme Court for discretionary review of the judgment of the Court of Appeals. In its notice of appeal to the North Carolina Supreme Court, Home Federal contended that the judgment of said Court of Appeals directly involved substantial questions arising under the Fourteenth Amendment to the United States Constitution.

In conference, and without briefs on the merits or oral argument, the North Carolina Supreme Court adjudged that Home Federal's appeal should be dismissed and its petition for discretionary review denied. Said Order of the North Carolina Supreme Court was entered and certified on July 5, 1979, and forwarded to counsel of record on the same date. The judgment of the North Carolina Court of Appeals was thereby rendered effective by the determination by the North Carolina Supreme Court.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

The questions presented herein are substantial for the following reasons.

1. This case involves the attempted assertion of jurisdiction by North Carolina over a federally chartered Florida savings and loan association and the applicability of North Carolina's long-arm statutes to an interstate loan transaction.

2. This case represents the first reported instance of an attempt by the North Carolina courts to assert jurisdiction under its long-arm statutes over litigation in which neither party to the lawsuit is a resident or otherwise present in the forum and the litigation involves a transaction to be performed outside of the state.

3. There is an apparent conflict in the decisions of the North Carolina appellate courts and the federal courts in their determination of what constitutes sufficient "minimum contacts" to permit the application of N.C.G.S., §55-145(a)(1), to contractual transactions involving foreign corporations.

4. Finally, this court has repeatedly expressed its concern for insuring that non-residents of a state shall be accorded full "due process" protection in connection with any attempt by a state to subject them to the jurisdiction of its courts.

I

APPELLANT'S CONTACTS WITH NORTH CAROLINA ARE TOO FEW AND INSUBSTANTIAL TO ALLOW ASSERTION OF JURISDICTION BY THE NORTH CAROLINA COURTS OVER APPELLANT WITHOUT VIOLATING ITS CONSTITUTIONALLY GUARANTEED RIGHT OF DUE PROCESS.

Appellant's contacts with North Carolina with respect to the gravamen of this case involve a permanent loan commitment which it issued from

Florida for a hotel to be built in North Carolina, several letters and phone calls to and from appellant in Florida and four visits by representatives of appellant to North Carolina in connection with its permanent loan commitment. In a separate, isolated transaction, appellant made a loan on an apartment project in North Carolina. In both transactions, a mortgage broker representing the borrowers solicited the loan, handled the negotiations for making the commitment and closing the loans and serviced same as an independent contractor. Other than these two instances, appellant has had no contacts with North Carolina.

Any assertion of jurisdiction by North Carolina over a foreign defendant such as appellant must ultimately be examined in light of the due process requirements that such assertion not offend traditional notions of fair play and substantial justice. International Shoe Co. v. Washington, 326 U.S. 310 (1945). Examining appellant's contacts with North Carolina in light of the standards enunciated in International Shoe Co. v. Washington, ibid, and subsequent case law, it becomes immediately apparent that the North Carolina Court of Appeals, in sustaining the trial court's order upholding its jurisdiction over appellant, has violated the due process protection guaranteed to foreign defendants.

Not only are the "minimum contacts/due process" issues raised by

this appeal substantial, but also they represent the logical extension of the line of questioning being posed in light of this court's decision in Shaffer v. Heitner, 433 U.S. 186 (1977), relative to overreaching by the long-arm statutes which various states have enacted. Although Shaffer involved the application of in personam jurisdictional rules to a quasi in rem factual situation, this court appears to have added another requirement for in personam jurisdiction and pointed out that the situs of the physical object of a controversy such as the hotel to have secured the permanent loan here, does not determine the due process requirements for jurisdiction. The ramifications of this case for future in personam cases has been the subject of a number of commentaries.[2]

Prior to Shaffer v. Heitner, supra, in personam jurisdictional challenges based on due process grounds had been analyzed in accordance with the standards enunciated in International Shoe Co. v. Washington, 326 U.S. 310 (1945), and Hanson v. Denckla, 357 U.S. 235 (1958). International Shoe had established the modern day jurisdictional standard that in order to comport with due process a forum could not assert

---

2 In addition to the articles cited herein, see also Charawell, Shaffer v. Heitner: A Single Standard for Acquiring Jurisdiction and its Implications in Idaho, 15 Idaho L.Rev. 141 (1978), for example.

jurisdiction over a foreign defendant unless that defendant had sufficient contacts with the forum such that jurisdiction in said forum would not offend traditional notions of fair play and substantial justice. The ensuing applications of International Shoe suggested that almost unbridled exercise of jurisdiction was to be granted to the several states, such trend reaching perhaps its outer limits in McGee v. Int'l Life Ins. Co., 355 U.S. 220 (1957).[3] In Hanson this court appeared to indicate that limitations on jurisdiction had not been abandoned. Furthermore, the necessity for minimum contacts was reiterated and the requirement that the defendant must do some act by which it purposefully avails itself of the privilege of conducting activities within the forum state was added. Hanson v. Denckla, supra at p. 253.

Shaffer v. Heitner, supra, next added a further factor to be considered in analyzing minimum contacts. This additional requirement for all jurisdictional cases, including in personam jurisdiction, is fairness. Id. at p. 711. The commentary in

---

3 A number of commentators have suggested that McGee v. Int'l Life Ins. Co., supra, is an exception, relating solely to the regulated life insurance industry, to the state decisis which has evolved concerning the due process requirements for in personam jurisdiction.

19 Santa Clara L. Rev. 217 (1979) provides a detailed and helpful analysis of Shaffer and its ramifications for in personam jurisdiction. This commentary notes that Shaffer, by focusing on the quality of the relationship between defendant and the forum and on the fairness of asserting jurisdiction under the circumstances of the particular case, provides a new standard which gives increasing importance to the peculiar facts of each case. The result would seem to be that more cases will be arguable either way and that fewer cases will lie snuggly in the jurisdictional tests utilized before Shaffer. This result is of course due to the "fairness" requirement imposed by Shaffer.

In Kulko v. Superior Court, 436 U.S. 84 (1978), the principles enunciated in Shaffer were applied to an in personam jurisdiction case. Utilizing what has been tagged as the "unified jurisdictional test"[4] that resulted from the addition of Shaffer to the existing guidelines, this court in Kulko cited the lack of a strong nexus between the forum and the defendant in denying jurisdiction. Elaborating further the Court said that even a strong "forum-plaintiff" and "forum-litigation" nexus will not override the need for a strong "forum-defendant" nexus.[5] Quoting Hanson v.

---

4 Comment, 1978 Wash. U.L.Q., No. 4, P. 797 (1978).

5 436 U.S. 84 at 98.

Denckla, supra, it was noted in Kulko that the threshold for determining whether the required nexus exists is the Hanson "purposefully availed" criteria. Kulko also reiterated the necessity of a case-by-case analysis of cases raising these jurisdictional issues.

The Shaffer and Kulko cases further emphasize the important questions raised by this case and the fact that a determination by this court of the issues raised by this appeal is needed to resolve the jurisdictional questions in accordance with the standards now applicable. The contacts of appellant with North Carolina do not create the "defendant-forum" nexus necessary for sustaining jurisdiction. Stated in Shaffer terms, it is simply not fair to subject appellant to jurisdiction in North Carolina in light of the minimal and incidental contacts, solicited by one other than appellant, which are present here. Additionally, appellant would cite that this case presents a prime factual situation for the Court to amplify, clarify and apply the unified jurisdictional test which has been suggested by the following cases applicable to the facts here.

The case of Piracci v. New York City Employees' Retirement Sys., 321 F.Supp 1067 (D. Md. 1971), involved facts almost identical to those in the instant case. There a permanent loan commitment was made by a foreign corporation whose contacts with the forum state of Maryland consisted of sending inspectors to Maryland on

several occasions to report on the progress of the project, a previous loan commitment on another project in Maryland, and a tri-partitite loan agreement with the borrower and construction under which the construction lender made a construction loan in reliance on defendant's permanent loan commitment. The defendant had no office or agents in Maryland. The court held that due process required a finding of no jurisdiction.

In reaching this conclusion the Piracci court considered each of the contacts of the defendant and found them to be too minimal to allow jurisdiction.

> Viewed in isolation, the sending of the inspectors into Maryland would not amount to minimum contacts sufficient to satisfy the constitutional tests. Id. at p. 1072.
>
> The other commitment, on a Baltimore post office, is a factor to be considered, but a very minor factor.
>
> Again, the various actions taken by plaintiffs in Maryland in reliance upon the commitment amount to no more than "unilateral activity of those who claim some relationship with a non-resident defendant.
>
> . . . the cause of action did not arise from or out of any business transacted in Maryland.

> There was no solicitation in Maryland; the agreement upon which plaintiffs sued was made in New York and was repudiated there; and the cause of action does not rest on what the inspectors did or did not do on their visits in Maryland. Id. at p. 1073.

These passages from Piracci speak pointedly to the contacts in the instant case and show those contacts not to be of the substantial nature required by due process.

There were other factors in Piracci which created a stronger "nexus" with the forum there and are absent in this case. In Piracci the plaintiffs were residents of Maryland. Here neither the plaintiff-appellee nor appellant is a North Carolina corporation or has a place of business in North Carolina or transacts business there. Secondly, there was a tri-partite loan agreement in Piracci between the borrower, the construction lender (a Maryland lender) and defendant. Here the permanent loan commitment sued upon was from appellant to the broker for the prospective borrower, which are not parties to this action. This case thus presents a more compelling set of facts for finding sufficient contacts than even the Piracci case.

In Golden Belt Mfg. Co. v. Janler Plastic Mold Corp., 281 F.Supp. 368 (M.D.N.C. 1967), the District Court for the Middle District of North Carolina

held that the contacts of the defendant with North Carolina were insufficient to satisfy due process, where plaintiff sought to sue defendant for damages for breach of contract. The nature and substance of the Illinois defendant's contacts with North Carolina are similar to those of appellant here: principal place of business out-of-state, initial contact with North Carolina solicited by visit to defendant's principal office located out of North Carolina, and submission of a proposal by defendant upon which a contract could be made. The court found that the Illinois corporation lacked the contacts with North Carolina necessary for jurisdiction to comport with due process, even though the plaintiff there was a resident of North Carolina.

Another case which presents contacts more substantial than those here is United Advertising Agency, Inc. v. Robb, 391 F.Supp. 626 (M.D.N.C. 1975), in which sufficient contacts to satisfy due process were not found. Those connections consisted of performance of advertising services in North Carolina pursuant to a contract with the North Carolina plaintiff. As has been shown, there was to be no performance of the contract at issue in North Carolina. Additionally, there is not a North Carolina plaintiff here.

United Advertising, in finding insufficient contacts, keyed in on the principle enunciated in Hanson v. Denckla, supra, that the unilateral activity of one claiming a relationship with a non-resident defendant is insufficient to create the requisite contact. This

principle is highly significant in this case in that appellant's only contacts with North Carolina were the result of unilateral activity on the part of the borrower's broker, who is not a party to this action. In fact, appellee itself herein only has had contact with North Carolina through the unilateral activity of the non-party borrower's broker. These factors militate strongly in favor of a finding of insufficient contacts on the basis of Hanson v. Denckla, ibid.

The case of Staley v. Homeland, Inc., 368 F.Supp. 1344 (E.D.N.C. 1974) is important in this line of decisions because it capsules the crucial case law up to that point under N.C.G.S., §55-145, summarizing what that case law indicates in terms that reinforce the above discussion:

> Certain criteria appear from the above discussion which apply to the case at bar. First, if the company's activity is regular, or systematic, or continuous, minimum contacts exist. Second, if a contract is to be actually performed in North Carolina and has a substantial connection with this State, jurisdiction will lie. Third, where defendant obviously uses, benefits, or can easily use the laws of North Carolina, jurisdiction will lie. Fourth, if there is only one contact with North Carolina and such contact does not involve a contract to be performed here,

> there is no jurisdiction. And finally, if defendant has never had any interest in North Carolina or contacts here, even if it can reasonably be expected that his product will be used or consumed here, to grant jurisdiction for that reason would be unconstitutional. Id. at p. 1350.

In Staley, the court determined that insufficient contacts were present to allow jurisdiction over the corporate defendant under the above criteria.

In evaluating appellant's contacts with North Carolina in this case, it is evident that its activity in North Carolina does not rise to the levels required by Staley. Issuing a permanent loan commitment for two North Carolina projects is certainly not regular, systematic or continuous activity in North Carolina since the issuances emanated from Hollywood, Florida, and were solicited by the borrower's brokers. The performance of the commitment which appellant is alleged to have breached here was to be the purchase of the construction loan documents from appellee in Hollywood, Florida. Appellant has not obviously used or benefitted from the laws of North Carolina.[6]

---

6 Though a North Carolina deed of trust utilized in such commitments might be suggested as invoking the benefits of North Carolina law, as will be discussed below, the deed of trust is merely incidental to the commitment as a whole.

Although in two transactions appellant has had incidental contacts with North Carolina, performance in this case did not involve substantial contacts with North Carolina, and, furthermore, performance is alleged by appellee in its complaint supposedly to have occurred in Hollywood, Florida. There is no product involved herein that would be used or consumed in North Carolina.

After finding that N.C.G.S., §1-75.4(4), provided a statutory basis for jurisdiction over the defendant in Munchak Corp. v. Riko Enterprises, Inc., 368 F.Supp. 1366 (M.D.N.C. 1973), the court proceeded to see if jurisdiction was allowable under the minimum contacts criteria. A North Carolina corporation sued a Pennsylvania corporation for damages resulting from alleged wrongful interference with plaintiff's contractual relations with a third party. Defendant contested the assertion of jurisdiction over it. The court dismissed for lack of in personam jurisdiction over the defendant. Defendant in the Munchak case had the following contacts with North Carolina: limited and sporadic marketing activity through television shows from which the defendant's share of revenue was pre-determined and did not vary whether or not the television show was aired in North Carolina; regular entry by defendant's agents into North Carolina for evaluating the talent of basketball players, although the agents were not authorized to enter into employment negotiations; and the defendant's interference with plaintiff's contract with one of its players in North Carolina. These contacts were held insufficient under the Fourteenth

Amendment to sustain jurisdiction. Again, these contacts would appear to involve greater contact with and activity in North Carolina than that of appellant. Appellant has sent no agents on a regular basis to North Carolina with an eye to future business dealings or negotiations nor has it committed any tortious act in North Carolina.

A North Carolina business association filed a civil action against a Delaware corporation due to the defendant's alleged failure to pay for goods shipped to it by the plaintiff. The case resulted in the decision by the North Carolina Court of Appeals which dismissed the suit due to lack of jurisdiction over the defendant. William R. Andrews Assocs. v. Sodi Bar Syss. of D.C., Inc., 28 N.C. App. 663, 222 S.E.2d 922 (1976), cert. den'd, 289 N.C. 726, 224 S.E.2d 676 (1976). In reversing the denial of the defendant's motion to dismiss, the North Carolina Court of Appeals found that the defendant did not have the minimum contacts necessary to allow North Carolina to acquire jurisdiction. In reading the court's treatment of the defendant's contacts with North Carolina, it is almost as if the court were reciting the contacts which this appellant has had with North Carolina: it maintained no office in North Carolina, solicited no business in North Carolina, advertised in no media coming into this state, and had no contact of any nature with any person, firm or corporation in the State of North Carolina excepting only its transactions with the plaintiff therein. Its only contact with North Carolina was that on two occasions it

had entered into contracts outside of North Carolina resulting in shipments of goods being made into North Carolina. The court found these contacts to be too meager to uphold jurisdiction.

In the Andrews case the plaintiff was a North Carolina business association whereas in this case the appellee is a New York corporation. Additionally, in the Andrews case the only contact with a business in North Carolina was with the plaintiff whereas in the instant case appellant's only contact with a business in North Carolina has been with and through Atlantic Mortgage as a result of Atlantic Mortgage's solicitation of appellant. Of course, Atlantic Mortgage is not a party to the instant lawsuit.

Various North Carolina cases have found sufficient contacts to sustain jurisdiction under N.C.G.S., §55-145(a)(1) when such jurisdiction was initially invoked due to performance of a contract in North Carolina. In these cases[7]

---

7 In Byham v. Nat'l Cibo House Corp., 265 N.C. 50, 143 S.E.2d 225 (1955), the contract at issue was a franchise for restaurant operations in North Carolina and practically all of defendant's contacts with North Carolina grew out of performance by defendant under the franchises for North Carolina restaurants.

In Koppers Co., Inc. v. Chemical Corp., 9 N.C.App. 118, 175 S.E.2d 761 (1970), the court found minimum

can be seen the importance placed by the courts on performance in North Carolina of the contracts sued upon and contacts related to such performance as determinative of the minimum contacts inquiry. These cases evidence the substantial type of activity which has persuaded North Carolina courts to find sufficient contacts by a foreign defendant with North Carolina, a substantial type of activity not present in this case. For example, in Munchak Corp. v. Caldwell, 25 N.C. App. 652, 214 S.E.2d 194 (1975), the court, after determining that N.C.G.S., §55-145(a)(1), purported to grant jurisdiction, stated that:

> While the mere execution of a contract in North Carolina has never been held to be such a [substantial] connection, we believe that the execution, anticipated performance, and continuing part performance

---

7 (Cont'd.)
contacts based on actions defendant had or might have to undertake in North Carolina as a result of performance or nonperformance of the contract at issue.

Similarly, the contacts of defendant in Crabtree v. Coats & Burchard Co., 7 N.C.App. 624, 173 S.E.2d 473 (1970), consisted mainly of a continuous pattern of sales activity in North Carolina, commissions on which were at issue therein.

> of the contract in Greensboro constitute substantial in-state activity. (Emphasis added.) Id. at p. 654.

In this language is found a typical approach of the courts which have considered jurisdiction under N.C.G.S., §55-145(a)(1), an approach which continually emphasizes that the minimum contacts required to support jurisdiction under due process must be intimately related to the contract itself and particularly to its performance. For example, in Munchak, one of the defendants who was a party to the contract at issue resided in North Carolina and received remuneration under the contract in North Carolina. The North Carolina courts have shown great willingness to find minimum contacts when the execution and performance of a contract at issue is in North Carolina and one of the parties was a North Carolina resident.

In Telerent Leasing Corp. v. Equity Assocs., Inc., 36 N.C. App. 713, 245 S.E.2d 229 (1978), the court placed emphasis on contacts of the defendant with North Carolina which related to performance of contracts of the defendant in order to justify its finding of minimum contacts. In Telerent these contacts were found principally in the ongoing contractual relations and obligations arising therefrom between defendants and plaintiff, a corporation with a principal place of business in North Carolina. In contrast, this case involves no ongoing contractual relations and obligations between appellant and

appellee, nor does either party have a principal place of business in North Carolina. It is also significant that performance of the contract involved in Telerent would be partly accomplished in North Carolina, a factor not present as to the contract at issue in this appeal.

It is in light of all of the above-described factors that it becomes clear that the North Carolina Court of Appeals' reliance on Equity Assocs. v. Soc. for Savings, 31 N.C. App. 182, 228 S.E.2d 76 (1976), is ill-placed. Although the case appears at first blush to be on all fours with the instant case, the differences in the two cases are significant. First, the plaintiff there was a North Carolina partnership that was actually a party to the contract, a strong factor in the courts' finding that jurisdiction exists.[8] Secondly, the contract sued upon there was a tri-partite loan agreement between the borrower, the construction lender and the permanent lender. Thirdly, though the contract in Equity was made in North Carolina, the court also seems to rest its finding of sufficient contacts upon an erroneous view that performance of the loan agreement by the permanent lender involved building a motel in

---

8 Colston, Corporations - Jurisdiction over Foreign Corporations Not Qualified to Transact Business in North Carolina, 44 N.C. L.Rev. 457 (1966).

North Carolina and established the performance contacts that have been so strongly emphasized in other similar cases. As has been discussed, performance by the permanent lender as alleged by appellee here was to consist of appellant's "take-out" of appellee's construction loan by the purchase of the construction loan documents at appellant's office in Hollywood, Florida. Construction of the project for which the loan was made was not the performance desired or alleged by the plaintiff in either Equity or this case.

Appellant's contacts with North Carolina relate largely to a deed of trust to be issued in connection with the permanent loan commitment. That deed of trust is only incidental to the contract at issue and is a document having no relevance to the relationship, if any, between appellant and appellee. In agreeing to permanent financing, appellant was naturally interested in assurances that the security it would take for repayment of that loan would be adequate. Negotiations conducted in North Carolina, visits to the construction site, certain letters and phone calls to and from North Carolina would have involved efforts by appellant to analyze whether the credit and security to be provided would suffice to a degree that appellant felt safe in lending the substantial amount requested. Though this might at first blush appear to offer evidence of contacts with North Carolina, in truth the deed of trust and contacts relative thereto are merely incidental to the contract at issue and the obligations thereunder.

The heart of the contract and its performance consisted of extending permanent financing by purchase of a construction note and deed of trust, performance of which was contemplated in Hollywood, Florida.

It has been noted that the fact that a loan is secured by a deed of trust on property in a certain state does not affect the locality of the business being done.[9] A mortgage or deed of trust is deemed incidental to a loan, and a foreign corporation is not subject to the laws of the state where the subject real property is located. 9 John Marshall Jour. of Practice and Procedure 295, 322 (1976). The Restatement (Second), Conflict of Laws, §189, comment b (1971), provides as follows:

> By way of contrast, the rule [that the law of the situs of the property controls] does not apply to contracts in which one party agrees to lend the other money and the other promises to repay the loan and also to give a mortgage on his land as security. Here the debt is the principal thing in the minds of the parties, and the promise to give the mortgage is accessory to the debt.

---

9 Note that the business being done herein is the lending of money in Hollywood, Florida.

Further, the existence of the deed of trust covering real estate in North Carolina would not have any substantial connection with performance of the permanent loan commitment. Additionally, any deed of trust executed to secure the permanent loan would create an obligation and contractual relationship between appellant and the borrower. Appellee was not a party to the transaction.

It would violate appellant's due process rights to allow assertion of jurisdiction over it. Appellant's contacts fail to provide the necessary connection with North Carolina when those contacts consist only of letters to North Carolina, telephone calls to North Carolina, visits to North Carolina by appellant's representatives and a previous permanent loan commitment issued from Florida on a project in North Carolina. Previous minimum contacts cases support a finding of insufficient contacts here, and fairness mandates such a finding. Appellant respectfully submits that allowing jurisdiction would represent a major departure from established jurisdictional standards under due process and a substantial erosion of due process protections that are available to foreign defendants.

II

ARTICLE 10 OF CHAPTER 55 OF THE NORTH CAROLINA GENERAL STATUTES IS AMBIGUOUS, CONTRADICTORY AND, THEREFORE, UNFAIR IN ITS APPLICATION TO FOREIGN CORPORATE LENDERS.

North Carolina statutory and case law as to jurisdiction has resulted in an extremely unfair trap for foreign corporations such as appellant. If in fact appellant can be subjected to jurisdiction in North Carolina under N.C.G.S., §55-145(a)(1), then this creates a policy that is contradictory to that contained in N.C.G.S., §55-131. No where is this more clearly exhibited than in this case. N.C.G.S., §55-131 recites several activities which if carried on in North Carolina are not to be deemed as constituting transacting business in North Carolina. One of these activities is:

> (6) Making or investing in loans with or without security including servicing of mortgages or deeds of trust through independent agencies within the State. . . .

By its own terms, N.C.G.S., §55-131, is effective for purposes of the statutory Chapter in which it is contained, which is the same Chapter in which N.C.G.S., §55-145(a)(1), is found. Appellant's only activities that have had any connection whatsoever with North Carolina have been of the type defined above as activities not constituting transacting business in North Carolina. Yet the statutes lay a tricky trap if the judgment of the North Carolina Court of Appeals is allowed to stand. By allowing jurisdiction under N.C.G.S., §55-145(a)(1), that court has allowed appellant to be lured into the State under the protection of N.C.G.S.,

§55-131(6). Once here, though only minimally here as far as contacts are concerned, the court has clamped its jurisdictional hold on appellant under a statute to which N.C.G.S., §55-131, is applicable, by virtue of acts it has performed that have been defined by N.C.G.S., §55-131, as not transacting business. The situation created by this apparent contradiction in the North Carolina statutes is reminiscent of a point made by the Court in Erlanger Mills v. Cohoes Fibre Mills, 239 F.2d 502 (4th Cir. 1956). There the court cited the burdens that could be placed on interstate commerce by the fact that even though a business's activity is insubstantial in a foreign forum, liberal jurisdictional provisions might nevertheless subject it to lawsuit there. Similarly, of what benefit is it to appellant to have its only activities in North Carolina deemed so insubstantial that it is defined by statute not to be transacting business in North Carolina if at the same time the statutes of the state and application thereof by the state courts result in its being subject to lawsuit therein. The contradiction - and the unfair trap it lays for ones such as appellant - are obvious.

Further, the contradiction between N.C.G.S., §§55-131 and 55-145(a)(1), creates a situation which would demand a finding of no jurisdiction over appellant in light of the fairness standard established by Shaffer v. Heitner, supra. The Shaffer case requires that assertions of jurisdiction over foreign defendants must be tested, in addition to other criteria, in light of whether

it is fair under the circumstances of the case to assert jurisdiction over the defendant. The contradiction between N.C.G.S., §§55-131 and 55-145(a)(1), certainly flies in the face of fairness especially as said statutes operate here. Appellant, upon solicitation by an independent party from North Carolina, was to make a loan, an activity deemed not transacting business in North Carolina. However, on the basis of this activity the North Carolina courts have grounded jurisdiction. The existence of this unfair trap for foreign corporations and resolution of the problems created thereby should be addressed by this Court.

III

N.C.G.S., §55-145(a)(1) DOES NOT PROVIDE A STATUTORY BASIS FOR JURISDICTION OVER APPELLANT WHEN APPLIED TO THE FACTS IN THIS CASE.

The North Carolina Court of Appeals in its opinion held N.C.G.S., §55-145(a)(1), to be the applicable statutory basis for sustaining jurisdiction over appellant and the cause of action herein arising out of a contract made in North Carolina. Appellant respectfully submits that said statute is inapplicable to the facts in this case, that the alleged contract was neither executed nor to be performed in North Carolina, and that, therefore, the opinion of the North Carolina Court of Appeals is clearly erroneous.

A. N.C.G.S., §55-131(6) excludes a permanent loan commitment from the purview of subsequent sections of Article 10 of Chapter 55 of the North Carolina General Statutes, including N.C.G.S., §55-145(a)(1).

N.C.G.S., §55-131(6), provides that the "making or investing in loans with or without security including servicing of mortgages or deeds of trust through independent agencies within the State . . . ." is not the type of contractual transaction which subjects a foreign corporation to the provisions of Chapter 55, including N.C.G.S., §55-145(a)(1), on which the North Carolina Court of Appeals has based jurisdiction over appellant. It is not consistent nor, the appellant would urge, proper for the North Carolina courts to find jurisdiction on the basis of a type of contract which the North Carolina legislature has excepted from the applicability of the chapter of the statutes upon which jurisdiction has been based.

B. The permanent commitment, as appellee contends it is constituted, by its own terms, establishes that the final act necessary to consummate the commitment at issue is not a contract made in North Carolina.

Appellee herein has contended that the contract being sued upon is contained in a letter issued by appellant on April 14, 1972. The North Carolina

Court of Appeals found that the contract at issue herein was made in North Carolina thus invoking jurisdiction under N.C.G.S., §55-145(a)(1).[10] This finding is clearly erroneous and inconsistent with the terms of the commitment itself. In a letter of April 14, 1972, written by the president of appellant, are set forth the terms of appellant's proposed permanent loan commitment. The last two sentences of that commitment identify the final acts necessary to accept or consummate the commitment:

> For your convenience, I am enclosing a copy of this letter for your acceptance. Receipt of same, executed by the borrower, together with the commitment fee of $60,000.00 must be acknowledged by May 15, 1972 or this commitment letter will be automatically cancelled. (Emphasis added.)

North Carolina case law indicates that the place of the consummation of a contract is that place where the last act required for a meeting of the minds was performed by either of the parties to the agreement. Nytco Leasing, Inc. v. Dan-Cleve Corp., 31 N.C. App. 634, 23 S.E.2d 559 (1976); Equity Assocs.

---

10 §55-145(a)(1) purports to grant jurisdiction over a foreign corporation not transacting business in North Carolina when the cause of action arises out of a contract made in North Carolina.

v. Soc. for Savings, supra; Willis Bros., Inc. v. Ocean Scallops, Inc., 356 F.Supp. 151 (E.D.N.C. 1972). Under the terms of appellant's offer to make a permanent loan commitment, that last act is clearly defined as the receipt by appellant in Florida of a copy of the commitment letter executed by borrower and accompanied by a $60,000.00 commitment fee. Thus the contract at issue was made in Florida and not in North Carolina as the North Carolina Court of Appeals has erroneously found.

C. The contract as accepted by the prospective borrower consisted of three letters (an offer by appellant from Florida to make a permanent loan, a counter-offer in the form of a conditional acceptance made by the borrower from North Carolina and an acceptance by appellant in Florida of the counter-offer) and was made in Florida.

Appellant has consistently maintained that the permanent loan commitment at issue herein was comprised of three letters, the last of which was the final act necessary to indicate a meeting of the minds and thus consummate the contract. Nytco Leasing, Inc. v. Dan-Cleve Corp., supra; Willis Bros., Inc. v. Ocean Scallops, Inc., supra. Appellant issued a letter dated April 14, 1972, setting forth terms of a proposed permanent loan commitment and mailed said letter to the borrower's mortgage broker in Winston-Salem, North Carolina. Borrower executed a copy of the April 14th commitment letter

and returned it to its broker with a cover letter requesting certain changes to the permanent commitment. This conditional acceptance, or counter-offer, was forwarded to appellant. Appellant consummated the permanent loan commitment by accepting the conditions of the counter-offer by means of a letter of May 24, 1972, issued by a representative of appellant from its offices in Hollywood, Florida. The North Carolina Court of Appeals found that the permanent loan commitment was a contract made in North Carolina. Appellant submits that a close review of the relevant letters, attached hereto as Appendices E-1, E-2 and E-3, will show that the last act required for a mutual meeting of the minds was appellant's May 24, 1972, letter from Florida accepting the borrower's counter-offer.

D. The inapplicability of N.C.G.S., §§55-145(a)(1), is further evidenced by the lack of contacts between appellee and appellant, the permanent loan commitment, and the construction loan commitment.

The contract on which appellee alleges a cause of action was a permanent loan commitment made by appellant to a broker representing a prospective borrower. This commitment was made almost nine months prior to appellee's issuance of a construction loan commitment to the proposed borrower's successor. Appellee's complaint herein purports to set up appellee as a third-party beneficiary of the permanent loan commitment. The third party rights, if

any, arose from actions taken by appellee in and from its principal place of doing business in New York, i.e. the making of a construction loan. No where in the evidence before the court at the hearing on appellant's motion to dismiss is there any indication of contacts between appellee and appellant in connection with the issuance by appellant of its permanent loan commitment and either the issuance by appellee of its construction loan commitment or the making of the construction loan by appellee. All contacts for the issuance of the permanent loan commitment were made by the prospective borrower's broker with appellant primarily by telephone and in Florida. All negotiations between the proposed borrower and appellee were handled by the borrower's broker with the appellee in New York.

E. The only other possible contractual basis for appellee's cause of action is not a contract made or to be performed in North Carolina.

The only other contractual basis alleged by appellee is an undated estoppel certificate agreement. This agreement was in the form of a letter addressed from appellant to appellee wherein the appellant acknowledged that the proposed borrower was not at that time in default under the terms and conditions of the permanent loan commitment and had satisfied certain terms and conditions of its permanent loan commitment and, also, agreed to certain mechanics of the closing of the permanent loan at such time as all of the conditions of the permanent loan commitment

had been complied with. This estoppel certificate was initially drafted by the borrower's broker but was redrafted and executed by representatives of the appellant at its Hollywood, Florida offices. The certificate was then taken by the borrower's broker to the New York offices of appellee. If this estoppel certificate provides a contractual basis for appellee's complaint, then it is not sufficient to invoke jurisdiction under N.C.G.S., §55-145(a)(1), since it was not a contract made in North Carolina. Nytco Leasing, Inc. v. Dan-Cleve Corp., supra; Willis Bros., Inc. v. Ocean Scallops, Inc., supra. And based on the allegations in appellee's complaint performance was not contemplated in North Carolina as the delivery of the documents to effect the "take-out" was alleged to have been made in Hollywood, Florida.

F. The contract at issue herein does not qualify as a contract to be performed in North Carolina under N.C.G.S., §55-145(a)(1).

Performance of the contract at issue herein was contemplated to be at the offices of appellant in Hollywood, Florida. Performance of the contract at issue was to consist of a purchase or "take-out" by appellant of the construction loan of appellee. If the tender by appellee of the documents for such purchase or take out were valid and complete as alleged by appellee, the performance by appellant called for by appellee did not require contact with North Carolina as evidenced by appellee's

purported tender at appellant's offices in Hollywood, Florida.

G. There is no other basis giving rise to jurisdiction over appellant under any North Carolina long-arm statute.

The only other available statutory grounds for jurisdiction over appellant are found at N.C.G.S., §§55-144 and 1-75.4. Copies of these statutes are attached hereto as Appendices D-1 and D-2 respectively. None of the provisions of these statutes appear applicable to the facts in this case. N.C.G.S., §55-144 refers to suits against foreign corporations transacting business in the State without authorization. N.C.G.S., §55-131, as has been seen, specifically provides that the making of a loan or permanent loan commitment by appellant did not constitute transacting business in North Carolina. N.C.G.S., §§1-75.4(1) - (6), contains other grounds for the assertion of jurisdiction over a foreign defendant. Appellant respectfully submits that an analysis of the provisions of the latter statute will indicate that its provisions are inapplicable to the facts here. Although appellee referred to both statutes in its brief and argument to the North Carolina Court of Appeals, that court did not discuss or refer to either statute in its opinion.

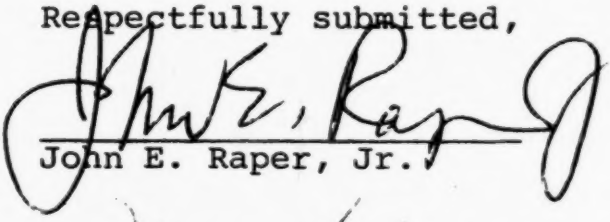
In summary, appellant submits that under the facts of this case N.C.G.S., §55-145(a)(1), does not constitute a statutory basis for the assertion of jurisdiction over appellant in North

Carolina, because there was no contract between appellant and appellee made or to be performed in North Carolina. In basing its findings on this statute, the North Carolina Court of Appeals acted in a clearly erroneous manner. The appellant requests that this error be reversed.

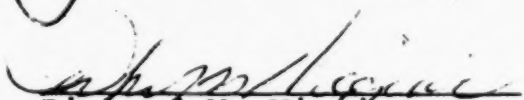
CONCLUSION

For the reasons stated above, probable jurisdiction should be noted.

Respectfully submitted,



John E. Raper, Jr.



Richard M. Wiggins

McCoy, Weaver, Wiggins,
Cleveland & Raper

Attorneys for Appellants

Dated: October 2, 1979

CERTIFICATE

In accordance with Rules 13(2) and 33(1) of the Rules of the Supreme Court of the United States, I hereby certify that I have on this 2nd day of October, 1979, filed the required 40 copies of Appellant's Jurisdictional Statement in the office of the Clerk of the U. S. Supreme Court and have mailed the required three copies of the same to Sydnor Thompson and Fred T. Lowrance, Grier, Parker, Poe, Thompson, Bernstein, Gage & Preston, 1100 Cameron-Brown Building, Charlotte, North Carolina 28204 by depositing same in a United States mail box with first class postage prepaid.

Given under my hand this 2nd day of October, 1979.

John E. Raper, Jr.

No. 170PC TWENTY-EIGHTH DISTRICT

SUPREME COURT OF NORTH CAROLINA
Spring Term 1979

****

CHEMICAL REALTY CORPORATION	)	
	)	JUDGMENT DISMISSING
v.	)	APPEAL ON MOTION OF
	)	AND DENYING PETITION
HOME FEDERAL SAVINGS AND LOAN ASSOCIATION OF HOLLYWOOD	)	FOR DISCRETIONARY REVIEW
	)	(7828SC420)

****

This matter came on to be considered upon defendant's notice of appeal from the North Carolina Court of Appeals, pursuant to G. S. 7A-30, upon the plaintiff's motion to dismiss the appeal for lack of a substantial constitutional question, and upon defendant's petition for discretionary review of the decision of the North Carolina Court of Appeals, pursuant to G. S. 7A-31; upon consideration thereof, it is adjudged by the Court in conference this 28th day of June, 1979, that the motion to dismiss the appeal be denied, and that it be so certified to the North Carolina Court of Appeals.

It is considered and adjudged further that the Defendant do pay the sum of NINE AND NO/100 DOLLARS ($9.00) and execution issue therefor.

s/ Brock, J.
For the Court

The foregoing order is issued over my hand and the seal of the Supreme Court this 5th day of July, 1979.

s/ John R. Morgan
John R. Morgan
Clerk of the Supreme
Court of North
Carolina

cc: North Carolina Court of Appeals
McCoy, Weaver, Wiggins, Cleveland & Raper,
Attorneys at Law
Grier, Parker, Poe, Thompson, Bernstein,
Gage & Preston, Attorneys at Law

40 N.C. App. 675
O P I N I O N
CHEMICAL REALTY CORPORATION v. HOME FEDERAL SAVINGS & LOAN ASSOCIATION OF HOLLYWOOD

No. 7828SC420

(Filed 17 April 1979)

APPEAL by defendant from Martin (H. C.), Judge. Orders entered 1 October 1977 and 27 October 1977 in Superior Court, BUNCOMBE County. Heard in the Court of Appeals 26 February 1979.

Plaintiff Chemical Realty Corporation (Chemical) is a New York corporation with its principal office in New York City. Defendant Home Federal Savings & Loan Association of Hollywood (Home Federal) maintains its principal office in Hollywood, Florida. Chemical alleges that Home Federal made a permanent loan commitment to advance $6,000,000 upon the completion of the Landmark Hotel in Asheville, North Carolina, and that in reliance on this permanent loan commitment Chemical made a $6,000,000 construction loan commitment to Landmark. Chemical further alleges that the parties entered into a "Letter Agreement" by which Home Federal agreed that upon construction of the hotel in substantial compliance with the plans and specifications it would purchase from Chemical a note for the indebtedness of Landmark to Chemical for the funds advanced under the construction loan and would accept an assignment from Chemical of a deed of trust on the hotel. For the alleged refusal of Home

Federal to perform under this letter agreement, Chemical seeks damages of at least $6,000,000. Chemical seeks a second $3,000,000 for the alleged refusal of Home Federal to extend the time during which the permanent loan commitment and letter agreement would be in effect, pursuant to the terms of the agreements.

Home Federal moved to dismiss for lack of subject matter jurisdiction, lack of personal jurisdiction, and improper service of process. In the alternative, Home Federal sought a "change of venue" to Broward County, Florida on the ground that Buncombe County is an inconvenient forum. Chemical then moved for leave to amend its complaint and summons by changing the defendant's name from "Home Federal Savings & Loan Association" to "Home Federal Savings and Loan Association of Hollywood."

The trial court granted Chemical leave to amend and denied Home Federal's motions to dismiss and for change of venue, making findings of fact and conclusions of law in support of its order. Home Federal's motion to amend the findings and conclusions was denied. Home Federal appeals.

Grier, Parker, Poe, Thompson, Bernstein, Gage and Preston, by Sydnor Thompson and Fred T. Lowrance, and Van Winkle, Buck, Wall, Starnes, Hyde and Davis, by Herbert L. Hyde, for plaintiff appellee.

John E. Raper, Jr. and Reginald M. Barton, Jr., for defendant appellant

ARNOLD, Judge.

I.

[1] Home Federal's argument that this action should have been dismissed for lack of subject matter jurisdiction is without merit. Original civil jurisdiction "is vested in the aggregate in the superior court division and the district court division as the trial divisions of the General Court of Justice." G.S. 7A-240. And where the amount in controversy exceeds $5,000, the superior court is the proper division for the trial. G.S. 7A-243. This action was brought appropriately in superior court.

II.

[2] Home Federal argues that none of the circumstances which would give the North Carolina courts personal jurisdiction over it exists in this case. In determining this question we consider North Carolina's long-arm statutes, since it is stipulated that Home Federal is a federal savings and loan association with its principal office in Hollywood, Florida, and that it has not applied for authority to transact business in North Carolina or appointed a local agent for service of process.

G.S. 55-145(a) provides that "[e]very foreign corporation shall be subject to suit in this State. . . on any cause of action arising. . . (1) Out of any contract made in this State or to be performed in this State . . . ." Home Federal contends that the permanent loan commitment was made not in North Carolina, but in Florida; that the "Letter Agreement" referred to in Chemical's complaint was in fact not an agreement, but an "estoppel certificate"; and that performance of any commitment was to take place in Florida.

For a contract to be made in North Carolina, the final act necessary to make it a binding obligation must be done here. Goldman v. Parkland of Dallas, Inc., 7 N.C. App. 400, 173 S.E.2d 15, aff'd 277 N.C. 223, 176 S.E.2d 784 (1970). In Goldman, a letter was sent to the North Carolina plaintiff from Atlanta, Georgia, instructing him: "If the above is agreeable, please sign and return the original copy of this letter." Plaintiff signed the letter in Greensboro, North Carolina, and deposited it in the mail there addressed to a Texas corporation. This Court found that the final act necessary in that case to create a binding obligation was the depositing of the letter containing the plaintiff's signature in the mail.

In the present case, three communications between the parties make up the permanent loan commitment. On 14 April 1972, Home Federal sent the permanent loan commitment letter to a North Carolina mortgage broker for forwarding to the borrower. This letter stated: "I am enclosing a copy of this letter for your acceptance. Receipt of same, executed by the borrower, together with the commitment fee of $60,000.00 must be acknowledged by May 15, 1972, or this commitment letter will be automatically cancelled." On 15 May 1972 the borrower executed a copy of the commitment letter and delivered it with a cover letter and the commitment fee to the mortgage broker, who mailed the letters and fee to Home Federal. The borrower's cover letter stated: "Attached please find copy of Commitment accepted by me on behalf of Asheville Development Associates as well as check for $60,000. We respectfully request that the following items and points of clarification be added to and made a part of captioned

Commitment. . . ." On 24 May 1972 Home Federal wrote back to the mortgage broker: "Please be advised that this Association is in receipt of $60,000.00 tendered by Asheville Development Associates. This letter is to confirm that our mortgage commitment dated April 14, 1972, is in full force and effect subject to three items. . . ."

Home Federal would have us find that the borrower's cover letter of 15 May was not an acceptance, but a counter-offer, and that Home Federal's letter of 24 May was the acceptance of this counter-offer and the final act necessary to create a binding contract. We see no support for this position in the communications involved. The borrower's letter of 15 May by its terms accepts the permanent loan commitment and requests three added "points of clarification" which do not change the essential nature of the commitment. The acceptance is not made conditional upon addition of the requested points. See 17 C.J.S. Contracts §43. Nor does Home Federal by its letter of 24 May treat the borrower's letter as a counter-offer; it merely acknowledges receipt of the commitment fee and confirms the mortgage commitment. We find that the contract was completed by the borrower's acceptance in North Carolina of the permanent loan commitment. As a result, G.S. 55-145(a)(1) applies to give the North Carolina courts personal jurisdiction over Home Federal.

Home Federal next contends that even if the statutory standards for jurisdiction are met, the constitutional requirements of due process are not. This contention is untenable. In Equity Associates v. Society for Savings, 31 N.C. App. 182, 228 S.E.2d 761, cert. den. 291 N.C. 711 (1976), we found,

based upon a fact situation practically identical to the one before us, that the contract itself was sufficient to satisfy the "minimum contacts" requirement of International Shoe Co. v. Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed 95 (1945). Also, here, as in Equity Associates, other factors set out in Byham v. National Cibo House Corp., 265 N.C. 50, 143 S.E.2d 225 (1965), for satisfying the test of "minimum contacts" and "fair play" are present. It is stipulated that Home Federal received actual notice of the action. Since the hotel which was the subject of the loan was constructed here, it seems clear that "crucial witnesses and material evidence," id., at 57, 143 S.E.2d at 231, also will be found here. Home Federal has availed itself of the benefits and protections of our laws not only by the instant contract, but also by a permanent loan commitment for a $2,500,000 loan for an apartment project in Jacksonville, North Carolina. That loan is secured by a deed of trust filed in North Carolina, and is being serviced by the North Carolina mortgage broker who arranged the loan in this action. Due process is satisfied.

III.

[3] Chemical's complaint and summons named as defendant "Home Federal Savings and Loan Association." Home Federal assigns as error the granting of Chemical's motion to amend these documents so that the defendant's name appears as "Home Federal Savings and Loan Association of Hollywood." As Chemical points out, it was entitled to amend its complaint as a matter of right, since no responsive pleading had been filed. G.S. 1A-1, Rule 15(a). Amendment of the summons may be allowed by the court in its discretion "unless it clearly appears that material

prejudice would result to substantial rights of the party against whom the process issued." G.S. 1A-1, Rule 4(i). Home Federal has not shown any prejudice that resulted from this misnomer. It is stipulated that Home Federal received the complaint and summons and knew that they were meant for it. We find no error in the court's ruling. Accord Bailey v. McPherson, 233 N.C. 231, 63 S.E.2d 559 (1951); Propst v. Hughes Trucking Co., 223 N.C. 490, 27 S.E.2d 152 (1943).

IV.

Home Federal contends that its motion to amend certain findings of fact and conclusions of law in the trial court's order should have been granted because the findings are not supported by the evidence. Where the trial judge finds the facts, they are conclusive on appeal if there is evidence to support them, even if there is also evidence to the contrary. Whitaker v. Earnhardt, 289 N.C. 260, 221 S.E.2d 316 (1976); Cox v. Cox, 33 N.C. App. 73, 234 S.E.2d 189 (1977). We have examined the contested findings and have found that each is based upon competent evidence.

Home Federal finally argues that certain findings and conclusions should be stricken because they are irrelevant to the issues before the court at the hearing on the motion. We find that all the challenged determinations resulted from issues raised by Home Federal in its motion. This assignment of error is unfounded.

We have considered Home Federal's other assignments of error and find that they are without legal merit.

Affirmed.

Chief Judge MORRIS and Judge CLARK concur.

No. 7828SC420 TWENTY-EIGHTH DISTRICT
(North Carolina Supreme Court
No. 170 PC)

NORTH CAROLINA COURT OF APPEALS

* *

CHEMICAL REALTY CORPORATION	)	
	)	From Buncombe
v.	)	(No. 76 CVS 02491)
HOME FEDERAL SAVINGS AND LOAN ASSOCIATION OF HOLLYWOOD	)	Filed September 19, 1979, Clerk, N. C. Court of Appeals

* *

NOTICE OF APPEAL

Appellant, Home Federal Savings and Loan Association of Hollywood, appeals to the Supreme Court of the United States from the final judgment of this Court filed on April 17, 1979 and certified on May 7, 1979, and from which judgment appellant appealed to and alternatively petitioned for discretionary review by the North Carolina Supreme Court, which Court dismissed appellant's appeal and denied its petition for discretionary review in conference on June 28, 1979, with judgment so ruling being issued and certified on July 5, 1979. The judgment appealed from upheld the trial court's denial of appellant's motion to dismiss for lack of jurisdiction over appellant.

This appeal is taken pursuant to 28 U.S.C.A., §1257. Jurisdiction has been asserted over appellant under the North Carolina long-arm statute found at N.C.G.S., §55-145(a)(1). Appellant at all times has claimed that assertion of jurisdiction over

it under §55-145(a)(1) and under any other North Carolina jurisdictional statutes violates rights secured to it under the Fourteenth Amendment to the Constitution of the United States. The final judgment from which this appeal is taken is in favor of the validity of said statute.

s/ John E. Raper, Jr.

s/ Richard M. Wiggins

Attorneys for Appellant
Post Office Box 2129
Fayetteville, NC 28302
(919) 483-8104

OF COUNSEL:

McCoy, Weaver, Wiggins,
Cleveland & Raper
Post Office Box 2129
Fayetteville, NC 28302

AFFIDAVIT OF SERVICE

John E. Raper, Jr., first being duly sworn, deposes and says:

1. That he is an attorney of record in the herein case for appellant, Home Federal Savings and Loan Association of Hollywood.

2. That he has, in accordance with the requirements of Rules 33(1) and 33(3)(c) of the Rules of the Supreme Court of the United States, on the date below named, served the foregoing Notice of Appeal on Sydnor Thompson and Fred Lowrance, Grier, Parker, Poe, Thompson, Bernstein, Gage & Preston, 1100 Cameron-Brown Building, Charlotte, North Carolina 28204, by depositing a copy of said Notice of Appeal in the United States mail

box, with first class postage prepaid, addressed to the above-named counsel of record for the appellee, Chemical Realty Corporation, at the address above recited.

And further your affiant saith not.

This the 18th day of September, 1979.

s/ John E. Raper, Jr.

Sworn to and subscribed
before me this 18th day
of September, 1979.

s/ Leslie A. Heilman
Notary Public

My Commission Expires:
12-27-82

N.C.G.S., §55-144

§55-144. Suits against foreign corporations transacting business in the State without authorization.--Whenever a foreign corporation shall transact business in this State without first procuring a certificate of authority so to do from the Secretary of State or after its certificate of authority shall have been withdrawn, suspended, or revoked, then the Secretary of State shall be an agent of such corporation upon whom any process, notice, or demand in any suit upon a cause of action arising out of such business may be served. (1901, c. 5; Rev., s. 1243; C. S., s. 1137; G.S., s. 55-38; 1955, c. 1143; c. 1371, s. 1.)

N.C.G.S., §1-75.4

§1-75.4. Personal jurisdiction, grounds for generally.--A court of this State having jurisdiction of the subject matter has jurisdiction over a person served in an action pursuant to Rule 4(j) of the Rules of Civil Procedure under any of the following circumstances:

(1) Local Presence or Status.--In any action, whether the claim arises within or without this State, in which a claim is asserted against a party who when service of process is made upon such party:
   a. Is a natural person present within this State; or
   b. Is a natural person domiciled within this State; or
   c. Is a domestic corporation; or
   d. Is engaged in substantial activity within this State, whether such activity is wholly interstate, intrastate, or otherwise.

(2) Special Jurisdiction Statutes.--In any action which may be brought under statutes of this State that specifically confer grounds for personal jurisdiction.

(3) Local Act or Omission.--In any action claiming injury to person or property or for wrongful death within or without this State arising out of an act or omission within this State by the defendant.

(4) Local Injury; Foreign Act.--In any action for wrongful death occurring within this State or in any action claiming injury to person or property within this State arising out of an act or omission outside this State by the defendant, provided in addition that at or about the time of the

injury either:

a. Solicitation or services activities were carried on within this State by or on behalf of the defendant; or

b. Products, materials or thing processed, serviced or manufactured by the defendant were used or consumed within this State in the ordinary course of trade.

(5) Local Services, Goods or Contracts.-- In any action which:

a. Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to perform services within this State or to pay for services to be performed in this State by the plaintiff; or

b. Arises out of services actually performed for the plaintiff by the defendant within this State, or services actually performed for the defendant by the plaintiff within this State if such performance within this State was authorized or ratified by the defendant; or

c. Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to deliver or receive within this State, or to ship from this State goods, documents of title, or other things of value; or

d. Relates to goods, documents of title, or other things of value shipped from this State by the plaintiff to the defendant on his order or direction; or

e. Relates to goods, documents of title, or other things of value actually received by the plaintiff in this State from the defendant through a carrier without regard to where delivery to the carrier occurred.

(6) Local Property.--In any action which arises out of:

a. A promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to create in either party an interest in, or protect, acquire, dispose of, use, rent, own, control or possess by either party real property situated in this State; or

b. A claim to recover for any benefit derived by the defendant through the use, ownership, control or possession by the defendant of tangible property situated within this State either at the time of the first use, ownership, control or possession or at the time the action is commenced; or

c. A claim that the defendant return, restore, or account to the plaintiff for any asset or thing of value which was within this State at the time the defendant acquired possession or control over it.

(7) Deficiency Judgment on Local Foreclosure or Resale.--In any action to recover a deficiency judgment upon an obligation secured by a mortgage, deed of trust, conditional sale, or other security instrument executed by the defendant or his predecessor to whose obligation the defendant has succeeded and the deficiency is claimed either:

a. In an action in this State to foreclose such security instrument upon real property, tangible personal property, or an intangible represented by an indispensable instrument, situated in this State; or

b. Following sale of real or tangible personal property or an intangible represented by an indispensable instrument in this State under a power of sale contained in any security instrument.

(8) Director or Officer of a Domestic Corporation.--In any action against a defendant who is or was an officer or director of a domestic corporation where the action arises out of the defendant's conduct as such officer or director or out of the activities of such corporation while the defendant held office as a director or officer.

(9) Taxes or Assessments.--In any action for the collection of taxes or assessments levied, assessed or otherwise imposed by a taxing authority of this State after the date of ratification of this act.

(10) Insurance or Insurers.--In any action which arises out of a contract of insurance as defined in G.S.58-3 made anywhere between the plaintiff or some third party and the defendant and in addition either:

a. The plaintiff was a resident of this State when the event occurred out of which the claim arose; or

b. The event out of which the claim arose occurred within this State, regardless of where the plaintiff resided.

(11) Personal Representative.--In any action against a personal representative to enforce a claim against the deceased person represented, whether or not the action was commenced during the

lifetime of the deceased, where one or more of the grounds stated in subdivisions (2) to (10) of this section would have furnished a basis for jurisdiction over the deceased had he been living. (1967, c. 954, s. 2.)

L E T T E R H E A D

HOME FEDERAL SAVINGS AND LOAN
1720 Harrison St.
P. O. Box 2168
Hollywood, Florida 33022

April 14, 1972

Mr. J. P. Lauffer
Atlantic Mortgage and Investment Company
3034 Trenwest Drive
Winston Salem, North Carolina 27103

Re: Proposed 300-Room Convention Hotel,
Asheville, North Carolina

Dear Mr. Lauffer:

This letter is to confirm my oral conversation with you regarding our commitment for $6,000,000.00 on the above proposed project, as more specifically described in the feasibility report directed to Mr. Earl Crawford of Overland Investments, Limited, 1907 Park Drive, Charlotte, North Carolina 28204, prepared by Laventhol, Krekstein, Horwath and Horwath, C.P.A.'s.

The terms of this commitment are as follows:

1. The receipt of an acceptable MAI appraisal by this Association prior to closing, indicating a value of the real estate to be encumbered of not less than $8,000,000.

2. This Association will disburse all loan proceeds available upon the full completion of the proposed hotel project in accordance with the working plans and specifications to be provided from that preliminary plan prepared by Lawrence J. Traber,

A.I.A., Job # 10-709, dated November 24, 1971. Such disbursement of proceeds will also be predicated upon the proposed facility being completely furnished and equipped to function in accordance with the assumptions made in the aforementioned feasibility report.

3. The interest rate will be 9 1/2% including 1/10 of 1% available for service to your Mortgage Company. Such loan shall be made for a period of 24 years and pursuant to all existing Federal Home Loan Bank regulations.

4. This loan is subject to an acceptable management contract to be executed by the borrower and the Hyatt House Hotel Corp.

5. This commitment will also be subject to such loan placing Home Federal Savings and Loan Association in the position of a mortgagee holding a valid first lien under the laws of the State of North Carolina, to which effect, title insurance must be provided in a Company acceptable to this Association.

6. All documentation required by the regulations of the Federal Home Loan Bank and the Federal Savings and Loan Insurance Corporation in effect at the time of funding of this loan, must be provided.

7. Any and all expenses incident to the purchase of said loan, must be paid by the borrower.

8. This commitment will be in full force and effect for a period of one (1) year from this date, subject; however, to the receipt of $60,000.00 not later than May 15, 1972, which fee is non-refundable.

In the event the borrower wishes to extend the commitment for an additional period of time the Association is willing to grant such extension, based on a commitment fee of $30,000.00 for each additional six-month period that such commitment remains in good standing. It is to be specifically understood that such fee must be paid fifteen (15) days prior to the expiration date of the outstanding commitment and that such fee also is to be the sole property of the Association for the payment of this commitment alone, whether or not such loan is ultimately consummated.

9. This commitment shall continue to be valid and effective under the conditions as stated above, but will automatically terminate by the happening of the following:

(a) The Association's failure to receive written certification from all applicable Government Authorities indicating that the completed project has been approved by them and that it can be operated and utilized in accordance with the assumption made in the aforementioned feasibility report.

(b) The adjudication of the borrower as bankrupt or insolvent by a Court of Competent Jurisdiction, or an order of such Court, and if such adjudication or order shall remain in force for a period of forty (40) days.

(c) All taxes and insurance shall be escrowed by the borrower, sufficient to provide for payment on the date that same are due and payable.

10. The personal liability of the principals and their spouses will apply to the top 1/3 of the principal balance of the

original loan. More specifically, Overland Investments, Limited, James T. Crawford and Vestal Taylor; and Earl Crawford.

For your convenience, I am enclosing a copy of this letter for your acceptance. Receipt of same, executed by the borrower, together with the commitment fee of $60,000.00 must be acknowledged by May 15, 1972 or this commitment letter will be automatically cancelled.

Sincerely yours,

s/ Thomas M. Wohl
President

TMW/gdr

L E T T E R H E A D

Uzzell and DuMont
311 Jackson Building
Asheville, N. C. 28807

15 May 1972

Mr. J. Michael Burroughs
Atlantic Mortgage & Investment Company
3034 Trenwest Drive
Winston-Salem, North Carolina 27103

Re: 14 April 1972 $6,000,000.00 Commitment
Home Federal Savings & Loan, Hollywood, Fla.
Proposed 300-Room Convention Hotel, Asheville, N.C.

Dear Mr. Burroughs:

Attached please find copy of Commitment accepted by me on behalf of Asheville Development Associates as well as check for $60,000.

We respectfully request that the following items and points of clarification be added to and made a part of captioned Commitment:

1. In the event M.A.I. appraisal is less than $8,000,000.00, Home Federal Savings & Loan may reduce its Loan Commitment proportionately to 75% of the appraisal.

2. Since Vestal Taylor is unmarried and my wife's health and her attending physicians prohibit her from engaging in any business activities, we would like to substitute a Nondivestature Agreement signed by all principals; and

3. In the event Home Federal does not approve either M.A.I. appraisal or Manage-

ment Contract or Plans, $60,000.00 Commitment Fee as well as all other fees paid will be returned.

Should there be any questions about the foregoing points of clarification, I will be glad to meet with you or Mr. Wohl, President of Home Federal, in order that such questions can be personally and immediately resolved.

I know that you will be pleased to learn that the firm of Whittington-Brice Associates, A.I.A., have been retained as architects for this project; this firm has a broad experience in high-rise structures and hotel facilities.

Please advise Mr. Wohl that we appreciate the personal trip he made to the site of this project and his interest in it, and I am certain that the project will be one which he and his institution will be proud of. Needless to say, we sincerely appreciate your fine, usual splendid cooperation and assistance. With best wishes, I am

Sincerely yours,

ASHEVILLE DEVELOPMENT ASSOCIATES

By: s/ F. Earl Crawford, Jr.
Managing Partner

/pb

Attachment

L E T T E R H E A D

HOME FEDERAL SAVINGS AND LOAN
1720 Harrison St.
P. O. Box 2168
Hollywood, Florida 33022

May 24, 1972

Mr. J. P. Lauffer
Atlantic Mortgage and Investment Company
3034 Trenwest Drive
Winston Salem, North Carolina 27103

Dear Mr. Lauffer:

Please be advised that this Association is in receipt of $60,000.00 tendered by Asheville Development Associates. This letter is to confirm that our mortgage commitment dated April 14, 1972, is in full force and effect subject to three items:

1. Home Federal Savings and Loan Association may reduce its loan commitment to 75% of the appraised value of the property in the event such required MAI appraisal is less than $8,000,000.00.

2. Home Federal Savings and Loan Association will not require the wife of F. Earl Crawford, Jr. to personally endorse the note, provided; however, Mr. Crawford executes a Nondivestature Agreement satisfactory to our counsel.

3. In the event Home Federal Savings and Loan Association does not approve the MAI appraisal, management contracts or plans, said commitment fee will be returned less all costs expended by this Association in connection with this commitment.

Sincerely yours,

s/ Thomas M. Wohl
President

TMW/pj

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

NO. 79-546

HOME FEDERAL SAVINGS AND LOAN ASSOCIATION OF HOLLYWOOD,

Appellant,

V.

CHEMICAL REALTY CORPORATION,

Appellee.

MOTION TO DISMISS APPEAL OF APPELLANT FROM THE ORDER OF THE SUPREME COURT OF NORTH CAROLINA DISMISSING APPELLANT'S APPEAL AND DENYING ITS PETITION FOR DISCRETIONARY REVIEW, AND, IN THE ALTERNATIVE, MOTION TO AFFIRM THE JUDGMENT OF THE TRIAL COURT, THE COURT OF APPEALS OF NORTH CAROLINA AND THE SUPREME COURT OF NORTH CAROLINA AND BRIEF IN SUPPORT OF SUCH MOTION.

GRIER, PARKER, POE,
THOMPSON, BERNSTEIN,
GAGE & PRESTON
1100 Cameron-Brown Bldg.
Charlotte, N. C. 28204

Joseph W. Grier, Jr.
Sydnor Thompson
Fred T. Lowrance
Attorneys for
Appellee

APPELLATE PRINTING SERVICES, INC., HERITAGE BLDG., RICHMOND, VA. (804) 643-7789

TABLE OF CONTENTS

	Page
Table of Authorities	(iv)
Motion to Dismiss and, In the Alternative to Affirm Judgment	1
Brief:	2
Questions Presented	2
Statement of the Case	3
Summary of Argument	5
Statement of Facts	8
Argument:	
I. The North Carolina courts have jurisdiction over the person of the appellant, and the assertion of jurisdiction over the appellant does not violate the due process requirements of the fourteenth amendment.	20
A. The appellant is subject to jurisdiction under G.S. §55-145(a)(1), since this action arises out of a contract made and to be performed in North Carolina.	22
(1) Both contracts were made in this state.	22

Page

(2) The contracts were substantially to be performed in North Carolina. 26

B. Home Federal is also subject to the jurisdiction of the courts of this state under the terms of G.S. §1-75.4(5)(a) and (b), in that this action arises out of a promise to perform services and out of services actually performed in this state and to pay for services performed within this state. 35

C. Home Federal is also subject to jurisdiction under the requirements of G.S. §1-75.4 (6)(a), since the action arises out of a promise to convey and acquire an interest in real property situated in North Carolina. 38

D. Home Federal is subject to the jurisdiction of the North Carolina courts pursuant to G.S. §55-145(a)(2) in that this action arose out of business solicited by Home Federal in North Carolina, at a time when it was soliciting other business. 40

E. Home Federal is also subject to the jurisdiction of the North Carolina courts based on the terms of G.S. §1-75.4(1)(d) and G.S. §55-144. 42

Page

F. Home Federal's "minimum contacts" cases are not applicable to this action. 43

II. G.S. §55-145(a)(1) is clear and consistent with the corporate law of North Carolina and thus is "fair" in its application to Home Federal. 53

Conclusions 56

Exhibits:

Findings of Fact, Conclusions of Law and Order A-1

Judgment Dismissing Appeal on Motion of Plaintiff and denying Petition for Discretionary Review B-1

Letter from Home Federal Savings and Loan of Hollywood to Chemical Realty Corporation C-1

TABLE OF AUTHORITIES

Cases:	Page
Andrews Associates v. Sodibar Systems of D.C., Inc., 28 NC App 663, 222 SE 2d 922 (1976), pet. for dis. rev. den., 289 NC 726, 224 SE 2d 676 (1976)	51
Byham v. The National Cibo House Corporation, 265 NC 50, 143 SE 2d 225 (1965)	24, 31
Chadbourn, Inc. v. Katz, 285 NC 700, 208 SE 2d 676 (1974)	39, 51
Dillon v. Numismatic Funding Corporation, 291 NC 674, 231 SE 2d 629 (1977)	42
Equity Associates v. The Society For Saving, 31 NC App 182, 228 SE 2d 761 (1976), pet. for dis. rev. den., 291 NC 711, 232 SE 2d 203 (1977)	27, 33, 52, 155
First Citizens Bank & Trust Company v. McDaniel, 18 NC App 644, 197 SE 2d 556 (1973)	30, 76

	Page
Golden Belt Manufacturing Company v. Janler Plastic Mold Corporation, 281 F Supp 368 (M.D.N.C. 1967)	48
Goldman v. Parkland, 277 NC 223, 176 SE 2d 784 (1970)	22, 23
Goldman v. Parkland of Dallas, Inc., 7 NC App 400, 173 SE 2d 15 (1970)	24
International Shoe Co. v. Washington, 326 US 310, 66 S.Ct. 154 (1945)	29
Koppers Company, Inc. v. Kaiser Aluminum & Chemical Corporation, 9 NC App 118, 175 SE 2d 761 (1970)	31
Kulko v. Superior Court of California, 436 US 584, 98 S.Ct. 1690 (1978)	46
McCoy Lumber Industries, Inc. v. Niedermeyer Martin Co., 356 F Supp 1221 (M.D.N.C. 1973)	33, 36
Milk Wagon Drivers' Union of Chicago v. Meadowmoor Dairies, Inc., 312 US 287, 61 S.Ct. 552 (1941)	9
Munchak Corporation v. Riko Enterprises, Inc., 368 F Supp 1366 (M.D.N.C. 1973)	50

Page

Norton Co. v. Department of Revenue of State of Illinois, 340 US 534, 71 S.Ct. 377 (1951) 9

Rirocci v. New York City Employees' Retirement System, 321 F Supp 1067 (D.Md. 1971) 46

Ruark v. Virginia Trust Company, 206 NC 564, 174 SE 2d 441 (1934) 43

Shaffer v. Heitner, 433 US 186, 97 S.Ct. 2569 (1977) 44

Staley v. Homeland, Inc., 368 F Supp 1344 (E.D.N.C. 1974) 49

State Highway and Public Works Commission of North Carolina v. Diamond Steamship Transportation Corporation, 225 NC 198, 34 SE 2d 78 (1945) 43

State of Missouri v. Public Service Commission of Missouri, 273 US 126, 47 S.Ct. 311 (1927) 21

United Advertising Agency, Inc. v. Robb, 391 F Supp 626 (M.D.N.C. 1975) 48

Statutes:

	Page
NCGS §1-75.4(1)(d)	42
NCGS §1-75.4(5)(a)	33, 35-37
NCGS §1-75.4(5)(b)	31, 33, 35, 38
NCGS §1-75.4(6)(a)	38
NCGS §55-131(b)(6)	7, 53-55
NCGS §55-144	42
NCGS §55-145(a)(1)	2, 5-8, 21-24, 26, 28, 31, 35, 37, 53-55
NCGS §55-145(a)(2)	40, 42
United States Constitution, Fourteenth Amendment	2, 3, 20, 29, 43

MOTION TO DISMISS AND, IN THE ALTERNATIVE, MOTION TO AFFIRM JUDGMENT

The plaintiff-appellee, Chemical Realty Corporation, hereby moves, pursuant to Rule 16(1)(b) of the Rules of the Supreme Court of the United States, to dismiss the appeal of the defendant-appellant, Home Federal Savings And Loan Association of Hollywood, from the judgment of the Supreme Court of North Carolina dismissing appellant's appeal and denying its petition for discretionary review. Appellee moves to dismiss the appeal on the ground that it does not present a substantial federal question, in that (a) the undisputed facts of the case clearly establish that the Superior Court of Buncombe County, North Carolina, has jurisdiction over the person of the appellant, and (b) the law which supports the decisions of all three of the North Carolina courts who considered this matter is clear and unequivocal.

In the alternative, the appellee moves the Court, pursuant to Rule 16(1)(d), to affirm the judgment of the trial court, the Court of Appeals of North Carolina, and the North Carolina Supreme Court in this action, on the ground that the questions on which the decision of this cause depends are so unsubstantial as to require no further argument, in that (a) the undisputed facts of the case clearly establish that the Superior Court of Buncombe County, North Carolina has jurisdiction over the person of the appellant, and (b) the law which supports the decision of the North Carolina courts is clear and unequivocal.

In support of this Motion, Appellee submits the following Brief.

B R I E F

Plaintiff-appellee has moved to dismiss defendant-appellant's appeal in this action on the ground that the questions presented by Appellant's appeal do not present a substantial federal question. The North Carolina Supreme Court has already dismissed Appellant's appeal to that court for that reason. The detailed findings of fact and conclusions of law of the trial court, affirmed by the North Carolina Court of Appeals, and reviewed by the North Carolina Supreme Court, clearly establish a constitutional exercise of jurisdiction over Appellant by the courts of North Carolina.

QUESTIONS PRESENTED

1. Were the North Carolina courts correct in holding that the Appellant is subject to the jurisdiction of the courts of North Carolina and that the assertion of such jurisdiction does not violate the Fourteenth Amendment of the United States Constitution, where the action is based upon a contract made and to be performed in North Carolina and where the Appellant purposefully invoked the benefits and protection of the laws of North Carolina?

2. Is GS §55-145(a)(1) clear and consistent with the corporate law of North Carolina such that its application to the Appellant complies with the

"fairness" doctrine of due process under the Fourteenth Amendment.

STATEMENT OF THE CASE

This action was commenced on December 20, 1976, by the plaintiff-appellee, Chemical Realty Corporation (hereinafter referred to as "Chemical" or "Appellee"), against the defendant-appellant, Home Federal Savings & Loan Association of Hollywood (hereinafter referred to as "Home Federal" or "Appellant"), in the Superior Court of Buncombe County, North Carolina. The action is based upon an alleged breach of contract by Home Federal (the Permanent Lender) to purchase a note and take an assignment of a deed of trust from Chemical (the Construction Lender) arising out of the construction of a hotel in Asheville, North Carolina, by a North Carolina corporation which borrowed the construction loan proceeds from Chemical.

On January 18, 1977, Home Federal filed a motion to dismiss the complaint on the ground, among others, that the North Carolina court lacked jurisdiction over the person of the defendant.

A hearing was held on August 26, 1977, before The Honorable Harry C. Martin, Senior Resident Superior Court Judge in Buncombe County (now Judge of the Court of Appeals of North Carolina), on Home Federal's motion to dismiss.

Subsequent to the hearing, after consideration of the pleadings, the affidavits of the parties and other witnesses, the depositions of the parties and witnesses, and briefs filed with the court, the court informed the parties that it had decided to deny Home Federal's motion. Home Federal specifically requested that the court make findings of fact and conclusions of law.

On October 1, 1977, Judge Martin entered his findings of fact, conclusions of law and order, denying Home Federal's motion to dismiss. The opinion of the trial court is extremely instructive, because of the detailed findings of fact and conclusions of law relating to jurisdiction over Home Federal. Consequently, a copy of that opinion is attached hereto as Exhibit A.

Home Federal appealed from the Order of October 1, 1977 to the North Carolina Court of Appeals. The appeal was argued in the Court of Appeals on February 26, 1979. On April 17, 1979, the Court of Appeals unanimously affirmed the Order of the trial court.

On May 21, 1979, Home Federal appealed to the Supreme Court of North Carolina from the Order of the Court of Appeals and, in the alternative, petitioned for discretionary review of that Order.

Chemical moved to dismiss the appeal on the ground that the appeal did not raise a substantial constitutional question, in that the undisputed facts and the law clearly supported the decisions of the trial court and the Court of Appeals.

On July 5, 1979, the Supreme Court of North Carolina granted Appellee's Motion and dismissed the Appeal and denied Home Federal's Petition for Discretionary Review. (The copy of the judgment of the Supreme Court of North Carolina attached to appellant's Jurisdictional Statement as Appendix A is incorrect, in that it leaves out the twelfth line of the judgment, dismissing the appeal and denying appellant's petition for discretionary review. For that reason, a copy of the judgment of the North Carolina Supreme Court is attached hereto as Exhibit B.)

The appellant filed its appeal with this court on October 2, 1979. A copy of appellant's jurisdictional statement was received by the appellee's attorneys on October 4, 1979.

SUMMARY OF ARGUMENT

1. GS §55-145(a)(1) provides that the courts of North Carolina have jurisdiction over a foreign corporation in an action arising out of a contract made or to be performed in North Carolina.

2. Chemical alleges that Home Federal is liable to it as a result of a breach of two contracts, a permanent commitment (of which Chemical was the third party

beneficiary), and a letter agreement between Chemical and Home Federal.

3. The facts found by the trial court and left unchallenged by the appellate courts clearly establish that one or both of the contracts sued upon by Chemical were made in North Carolina.

4. Both contracts call for substantial performance by the parties in North Carolina, including the construction of the hotel (which was the subject of the contracts) in North Carolina, the lending by Chemical of the money necessary to construct the hotel in North Carolina, the filing of a deed of trust and financing statements in North Carolina and monthly inspections of the project in North Carolina by Chemical's engineer.

5. The assertion of jurisdiction under GS §55-145(a)(1) does not violate the due process "minimum-contacts" requirement of the Fourteenth Amendment to the United States Constitution. The contracts were made and to be performed in North Carolina. The terms of the permanent commitment were negotiated in North Carolina by the president of Home Federal, employees of Home Federal visited North Carolina on several occasions in connection with the project and Home Federal required Chemical to attach Home Federal's deed of trust to Chemical's deed of trust at the time it was filed with the Register of Deeds of Buncombe County, North Carolina. Furthermore, Home Federal was admittedly engaged in a

"nation-wide lending program" pursuant to which it discussed numerous North Carolina projects with a North Carolina mortgage brokerage company, entered into a loan transaction with another North Carolina resident at about the same time as the transaction in the instant case, and is still participating in that other transaction. Home Federal also entered into a servicing agreement with a North Carolina mortgage brokerage company to service this loan and its other North Carolina loans.

6. The North Carolina Court of Appeals has held, in a case substantially identical to the instant case, that the permanent lender is subject to jurisdiction in North Carolina pursuant to GS §55-145(a)(1).

7. Home Federal is also subject to jurisdiction under a number of other North Carolina long-arm statutes, in that (a) Appellant has breached a contract to acquire an interest in real estate in North Carolina; (b) Appellant solicited this loan transaction at a time when it was soliciting other loan transactions in North Carolina; and (c) Appellant is engaged in substantial activity in this state.

8. The "minimum contacts" cases cited by Home Federal are not pertinent to this action.

9. GS §55-145(a)(1) is not ambiguous or contradictory and thus is not "unfair" in its application to Home Federal. GS §55-131(b)(6), which is

alleged to be contradictory to GS §55-145 (a)(1), simply provides that a foreign corporation shall not be considered to be transacting business in this state for the purpose of the Business Corporation Act by reason of making or investing in loans through independent agencies within this state. The primary purpose of GS 55-131(b)(6) is to exempt foreign corporations under certain circumstances from the requirement of obtaining a certificate of authority to do business in North Carolina. GS §55-145(a)(1) by its terms applies to corporations not transacting business in this state. Moreover, the numerous other long-arm statutes which support jurisdiction over Home Federal in this case are not contained in the Business Corporation Act.

STATEMENT OF FACTS

It is essentially a factual question as to whether the North Carolina long-arm statutes apply to establish jurisdiction over Home Federal, and to determine whether the assertion of jurisdiction complies with the due process requirements of the Fourteenth Amendment. The facts in this case, found by the trial court and affirmed by the North Carolina Court of Appeals, clearly establish that North Carolina has jurisdiction over Home Federal and that the assertion of jurisdiction does not violate the due process requirements.

This Court has held that it will not disturb the findings of fact of a state court unless there is evidence of a

"palpable evasion" of the defendant's constitutional rights. See Milk Wagon Drivers' Union of Chicago vs. Meadowmoor Dairies, Inc., 312 U.S. 287, 61 S. Ct. 552 (1941), stating that:

> "It is not for us to make an independent valuation of the testimony before the master. We have not only his findings but his findings authenticated by the State of Illinois speaking through her Supreme Court. We can reject such a determination only if we say that it is so without warrant as to be a palpable evasion of the constitutional guarantee here invoked. The place to resolve conflicts in the testimony and its interpretation was in Illinois courts and not here. To substitute our judgment for that of the State Court is to transcend the limits of our authority." Milk Wagon at p. 55.

And see Norton Co. vs. Department of Revenue of State of Illinois, 340 U.S. 534, 71 Sup. Ct. 377 (1951), holding that this court may examine the records to determine whether constitutional rights have been invaded, but "that does not mean that we will re-examine, as a court of first instance, findings of fact supported by substantial evidence." Norton at p. 380.

In fact, after the trial court entered its order in the instant case, Home Federal stipulated to most of the facts found by that court.

In summary, the essential facts of this case are as follows:

1. In the early spring of 1972, Asheville Development Associates, a North Carolina partnership composed of Earl Crawford and others, proposed to build a hotel in downtown Asheville, North Carolina. Crawford planned to obtain a short-term loan to construct the hotel. The construction lender would be paid off by a "permanent lender" who would then take a first deed of trust against the completed hotel and who, in turn, would be paid by Crawford's group over a long term.

2. Atlantic Mortgage and Investment Company in Winston-Salem, North Carolina, a mortgage brokerage company, put Crawford in touch with Home Federal.

3. Crawford met with Thomas Wohl, the president of Home Federal, and with employees of Atlantic, in Asheville. At the meeting, Wohl inspected the proposed hotel site and then proceeded to negotiate with Crawford the terms of the permanent loan. All of the essential terms of the permanent loan were decided upon at the meeting in Asheville, e.g., the principal amount, the interest rate, the term, the commitment fees, the length of the commitment, and the security for the loan.

4. When Wohl returned to Florida, he prepared the permanent commitment letter, dated April 14, 1972, and delivered it to Atlantic for forwarding to Crawford and for acceptance by him.

5. Atlantic forwarded the commitment to Earl Crawford in Asheville for his acceptance and execution. Crawford accepted the offer of Home Federal in Asheville and delivered an executed copy of the commitment letter, together with the $60,000 commitment fee, to Atlantic in Asheville. Atlantic then mailed the acceptance and fee to Home Federal from Winston-Salem, North Carolina.

6. In the summer of 1972, Home Federal objected to the management company proposed for the hotel. In October, 1972, Wohl met with Crawford, Atlantic, and Motor Inn Management Company (the proposed substitute company). That meeting took place in Charlotte, North Carolina. Subsequent to the meeting, Home Federal accepted Motor Inn Management Company as the substitute company.

7. In late November, 1972, Chemical was approached by a New York brokerage firm to become the construction lender for the project. Chemical met with Crawford and Atlantic, and was informed that Home Federal had made the permanent commitment and that Home Federal would "take out" the construction loan. In reliance upon the permanent commitment from Home Federal, Chemical issued a construction loan commitment on December 18, 1972.

8. Chemical then began to negotiate an agreement with Home Federal in order to make certain of the circumstances under which Chemical would be paid by Home Federal. Those negotiations were handled through Atlantic, acting as Home Federal's agent in the transaction.

9. On or about the first of April, 1973, Chemical and Home Federal reached a final agreement through telephone conversations with Atlantic. The terms of that agreement were reduced to writing in a letter prepared by Atlantic in Winston-Salem. The letter was delivered personally by Atlantic to Home Federal, was executed by Home Federal, and then was delivered personally by Atlantic to Chemical in New York. (Such agreement is hereinafter referred to as the "Letter Agreement". A copy of the Letter Agreement is attached hereto as Exhibit C. The Exhibits to the Letter Agreement are omitted because they constitute more than 30 additional pages.)

10. Relying on a permanent commitment and the Letter Agreement, Chemical closed the construction loan on April 13, 1973. Subsequently, Chemical forwarded to Home Federal an additional $90,000 in commitment fees in order to extend the commitment through October 14, 1974. Chemical then recorded the deed of trust (with Home Federal's deed of trust attached thereto) with the Register of Deeds of Buncombe County, and filed the financing statement with the Buncombe County Register of Deeds and the Secretary of State of North Carolina.

11. Home Federal hired a North Carolina attorney to certify that it would have a first lien on the hotel upon purchase of the note and deed of trust from Chemical.

12. Landmark Hotel, Inc. (the successor to Asheville Development Associates) began construction of the hotel. Chemical made monthly advances to Landmark for construction in a total amount of approximately $4,500,000. Each advance was certified by Chemical's engineer, Merritt & Harris, after an inspection of the hotel in Asheville.

13. In October, 1973, Home Federal entered into a servicing agreement with Atlantic, pursuant to which Atlantic was to service this loan and other loans for Home Federal. Payments on the Home Federal loans were to be made to Atlantic in North Carolina, and then forwarded to Home Federal by Atlantic after the servicing fee had been deducted.

14. During the course of construction, Landmark, Atlantic, and Chemical communicated with Home Federal about the status of construction and other matters relating to the hotel.

15. Home Federal's officers visited the construction site on a number of occasions to inspect the progress of construction.

16. The hotel opened for business in July, 1974, although construction was still being completed on some floors of the hotel.

17. In late September, 1974, the Asheville Housing Authority issued a certificate of occupancy for the hotel, and Chemical's engineers (as required by the Letter Agreement) certified that the hotel was completed in substantial compliance with the plans and specifications.

18. In late September, 1974, Crawford informed Atlantic and Home Federal that the terms of the permanent commitment had been met and that Crawford and Chemical were ready to close the permanent loan. Crawford requested that the closing take place in Asheville. Crawford received no response to that request.

19. The hotel shut down operations on October 9, 1974.

20. Chemical then informed Home Federal that it would close the permanent loan with Home Federal at Home Federal's office. (It did not appear that Home Federal was willing to attend the closing elsewhere at that point.) Chemical met with Tom Wohl and his attorney in Hollywood for the purpose of closing the permanent loan. Chemical took to its meeting with Home Federal the assignment of the deed of trust and an assignment of the financing statements, among other things. Home Federal refused to close the permanent loan because the hotel was closed. When it became evident that Mr. Wohl would not close the permanent loan at that time, Chemical's representatives requested an extension of the loan commitment, which Home Federal refused.

21. Substantially all of the requirements of the permanent commitment and Letter Agreement were to be performed in North Carolina:

a. An appraisal of the hotel project in Asheville was to be obtained.

b. The hotel was to be constructed in Asheville in accordance with certain plans and specifications.

c. The plans and specifications had been prepared by a North Carolina architect.

d. The hotel was to be furnished and equipped in accordance with certain requirements.

e. A management contract was to be entered into (and approved by Home Federal) between Landmark and the management company. The management contract was eventually entered into with Motor Inn Management, a North Carolina firm. Under the Motor Inn Management contract, Home Federal had the right to require Motor Inn Management to perform in the event a foreclosure occurred.

f. Home Federal was to receive a first lien deed of trust against the hotel property in Asheville, which deed of trust would have to be filed with the Register of Deeds of Buncombe County in order to perfect such a first lien.

g. Substantial commitment fees were to be paid in North Carolina by the borrower and were in fact paid in North Carolina, both with respect to the original

fees and the fees paid for the extension of the commitment at the time of the construction loan closing.

h. Approval of the hotel was to be obtained from various local governmental authorities.

i. Property taxes were to be escrowed by Atlantic (Home Federal's servicing agent).

j. The note to Home Federal was to be endorsed by the principals of Landmark, who were North Carolina residents.

k. To these facts may be added the significant consideration that the loan was negotiated and agreed upon in North Carolina in the early spring of 1972.

22. Landmark, in conjunction with Chemical, performed the various terms of the permanent commitment and Letter Agreement described above.

23. Home Federal also took part in the performance of a number of activities which occurred in North Carolina:

a. It agreed to purchase the note and take an assignment of the deed of trust from Chemical and thereby become the secured creditor of a North Carolina borrower.

b. It visited North Carolina on at least four occasions to negotiate the transaction and to inspect the property and the operation of the hotel.

c. It rejected the original management company and required the substitution of Motor Inn Management as the new management company, after interviewing Motor Inn Management in Charlotte.

d. It approved the preliminary plans and specifications.

e. It later approved the working plans and specifications prepared by the North Carolina architect when plans were finally adopted.

f. It approved the survey of the property.

g. It hired an attorney in Winston-Salem, North Carolina to certify that the construction and permanent loan notes and deeds of trust would place Home Federal in the position of the holder of a first deed of trust against the hotel upon assignment of the deed of trust to Home Federal.

h. It used Atlantic as its intermediary or agent throughout the transaction, including executing an agreement to engage Atlantic as servicing agent upon the closing of a permanent loan.

24. In addition, a number of very important actions of Chemical were to take place and did take place in North Carolina:

a. Chemical was to make advances under the construction loan to the North Carolina borrower and, from time to time, to various North Carolina

contractors, for the purpose of constructing the hotel in Asheville. In fact, Chemical did advance almost $4,500,000 for the construction of the hotel. The advances were delivered to Landmark in the form of checks made payable to the various contractors and suppliers.

b. Chemical's engineer, Merritt and Harris, Inc., visited the project at least monthly and prepared monthly inspection reports on the project. As required by the Letter Agreement, Merritt and Harris also certified, after inspection, that the hotel was in substantial compliance with the plans and specifications.

c. Home Federal's commitment fee was to be paid to it by Chemical. Chemical wired the first $30,000 directly to Home Federal's bank in Hollywood, Florida. Chemical delivered a subsequent fee to Atlantic, and Atlantic forwarded the fee to Home Federal.

d. Chemical was to obtain a first deed of trust against the hotel and a lien against the personal property, by making all of the proper filings in Buncombe County and with the Secretary of State of North Carolina. The deed of trust filed by Chemical in Buncombe County had Home Federal's deed of trust attached to it. At the time of the assignment by Chemical to Home Federal, the Home Federal deed of trust would become effective.

e. Chemical's employees visited the site on a number of occasions to check on the progress of the work and to help resolve problems.

In addition to the above described factors, substantially all of the material witnesses to the performance of the permanent commitment and Letter Agreement are in North Carolina, including:

Gene Whittington (supervising architect)
Dan Turner (president of D. C. Turner Construction Company, the general contractor)
Graham Armstrong (president of the furniture and fixtures contractor)
Earl Crawford (president of the borrower)
Motor Inn Management, Inc.
Asheville Housing Authority
Asheville building inspectors
Thomas Wharton, Mickey Burroughs, and J. P. Lauffer (employees of Atlantic)

Finally, Home Federal was engaged during the time in question in various other activities in this state, including consummating a $2,500,000 loan to a Jacksonville, North Carolina resident, secured by property in North Carolina. Home Federal's employees visited the site of that property in North Carolina, had an appraisal performed, and closed the loan in North Carolina. That loan is currently being serviced by Atlantic pursuant to the servicing agreement described above.

ARGUMENT

I. The North Carolina courts have jurisdiction over the person of the Appellant, and the assertion of jurisdiction over the Appellant does not violate the due process requirements of the Fourteenth Amendment.

In paragraph I (page 20) of its jurisdictional statement, Appellant contends that the assertion of jurisdiction over the Appellant by the North Carolina courts violates the due process clause of the Fourteenth Amendment, on the ground that the defendant does not have sufficient minimum contacts with this state in this case. In paragraph III (page 42) of Appellant's jurisdictional statement, Appellant contends that none of the North Carolina long-arm statutes apply to permit jurisdiction over the Appellant in this case. The North Carolina cases discussing the relevant long-arm statutes invariably discuss both the application of the statute and the due process issue. Consequently, Appellee will discuss both of these issues together.

The statement of facts set forth above clearly establishes that the Appellant has the necessary minimum contacts with North Carolina in this case. In addition, the decisions of the North Carolina Court of Appeals and the North Carolina Supreme Court clearly establish that the Appellant is subject to the jurisdiction of the Superior Court of Buncombe County, North Carolina and that such jurisdiction is well within

the parameters of the due process requirements.

The North Carolina Court of Appeals in this case has held that the Appellant is subject to the jurisdiction of the North Carolina courts under GS §55-145 (a)(1), discussed infra, on the ground that this action arises out of a contract made and to be performed in North Carolina. The trial court found that the Appellant was subject to jurisdiction under a number of other North Carolina long-arm statutes.

It is well established that this court will not review questions of state law, its only authority being to review federal questions. See State of Missouri vs. Public Service Commission of Missouri, 273 U.S. 126, 47 S. Ct. 311 (1927). Consequently, the decision of the state courts in this case concerning the applicability of North Carolina long-arm statutes to this Appellant are final and not subject to review. Nevertheless, Appellee will discuss the applicability of the various North Carolina statutes briefly, in order to respond to the contentions of the Appellant. In addition, the commentary of the North Carolina courts concerning the due process requirement differs with the particular long-arm statute being considered in the particular case. Consequently, the relevant due process decisions of the North Carolina court will be discussed in the context of each applicable long-arm statute.

A. The Appellant is subject to jurisdiction under G.S. §55-145(a)(1), since this action arises out of a contract made and to be performed in North Carolina. Chemical's action is based on two contracts entered into by Home Federal, the permanent commitment (of which Chemical is clearly the third-party beneficiary) and the Letter Agreement between Home Federal and Chemical. Either of those contracts is sufficient to give the court jurisdiction, and the combination of them assures it. G.S. §55-145(a)(1) states that:

> "Every foreign corporation shall be subject to suit in this state, whether or not such foreign corporation is transacting or has transacted business in this state and whether or not it is engaged exclusively in interstate or foreign commerce, on any cause of action arising as follows:
>
> (1) out of any contracts made in this state or to be performed in this state..."

(1) Both contracts were made in this state. In order for a contract to be made in North Carolina, the final act necessary to make it a binding obligation must be done in this state. In Goldman v. Parkland of Dallas, Inc., 7 N.C. App. 400, 173 S.E. 2d 15 (1970), the North Carolina Court of Appeals held that a contract was made in North Carolina within the meaning of G.S. §55-145(a)(1), where the defendant

foreign corporation sent a letter agreement to the plaintiff which was to be signed and returned by plaintiff to the defendant. The plaintiff signed his approval of the letter in North Carolina and mailed it back to the defendant. The letter from the defendant stated: "If the above is agreeable, please sign and return the original copy of this letter." In reaching its conclusion, the court summarized the general law in North Carolina:

> "For a contract to be made in North Carolina, it must be executed in North Carolina, that is, the final act necessary to make it a binding obligation must be done in the forum state... The final act in the present case which was necessary to make the agreement a binding obligation and therefore, a contract, was the depositing of the letter containing the signature of (the plaintiff) in the mail." Goldman at pages 407 through 408.

The court also held that the assertion of jurisdiction under GS §55-145(a)(1) over a foreign corporation based simply on the making of a contract in North Carolina did not violate the due process requirements of The United States Constitution:

> "...Our Supreme Court believes that a single contract, where it is made or to be performed, in North Carolina, is sufficient

> to subject the non-resident corporation to suit in North Carolina under G.S. §55-145 (a)(1).
>
> * * * * *
>
> G.S. §55-145(a)(1) confers jurisdiction upon our courts when the contract is made or to be performed in North Carolina; therefore, where it is found that the contract was made in North Carolina or was to be performed in North Carolina, a sufficiently substantial contact to confer jurisdiction on the North Carolina courts has been established." (emphasis added) Goldman at page 406.

In affirming the Court of Appeals (Goldman v. Parkland, 277 N.C. 223, 176 S.E. 2d 784 [1970]), the North Carolina Supreme Court stated the North Carolina law that G.S. §55-145 was intended to give the North Carolina courts "the power to assert jurisdiction over nonresident defendants to the full extent permitted by the due process requirement." Goldman, supra, 227 N.C. at 230. See also, to the same effect, Byham v. The National Cibo House Corporation, 265 N.C. 50, 143 S.E. 2d 225 (1965).

Chemical contends that it is entitled to recover from Home Federal for breach of Home Federal's obligations under the commitment letter, of which Chemical was

the third party beneficiary. The original commitment letter states specifically that: "For your convenience, I am enclosing a copy of this letter for your acceptance." (emphasis added) Upon receipt of the original commitment letter, Atlantic immediately forwarded the letter to Earl Crawford for his acceptance. Mr. Crawford executed the acceptance in Asheville and delivered it in Asheville to Atlantic (together with the $60,000 commitment fee). Atlantic then mailed the acceptance from Winston-Salem, North Carolina to Home Federal. Clearly the contract was made in North Carolina since the final act of acceptance took place in North Carolina.

Furthermore, all of the material terms of the original commitment were agreed upon by Landmark and Home Federal at the meeting in Asheville in the early spring of 1972.

Home Federal contends that the acceptance by Crawford was contingent upon Home Federal's agreeing to certain other conditions. It refers to the cover letter which was delivered to Atlantic along with the accepted commitment letter and the $60,000 fee. That cover letter requests that certain items be "added to" the commitment and states that Crawford would be glad to meet with Home Federal to discuss the request. There is no indication that the additional requests are conditions to Crawford's acceptance. In fact, the first sentence of the cover letter specifically states that the commitment is enclosed "accepted by me on behalf of Asheville Development Association."

Furthermore, Michael Burroughs, the employee of Atlantic who received the signed commitment from Crawford in Asheville, stated in his affidavit that he was present when the cover letter was prepared and that Crawford and his attorney specifically stated that the commitment was accepted, whether or not Home Federal subsequently agreed to the three additional requests.

With respect to the Letter Agreement between Chemical and Home Federal, the terms were agreed upon by both parties through conversations and correspondence with Tom Wharton whose office was in Winston-Salem, North Carolina. When final agreement had been reached, Wharton reduced the agreement to writing in Winston-Salem for the formality of execution by Home Federal. Consequently, that contract was also effectually made in North Carolina at the time that final agreement to all terms was communicated to Wharton in Winston-Salem.

In any event, based on many of the above described factors, the North Carolina Court of Appeals found that the permanent commitment was made in this state. That is a question of state law, which should not be considered by this Court.

(2) The contracts were substantially to be performed in North Carolina. G.S. §55-145(a)(1) states that jurisdiction will be granted if the cause of action arises out of a contract to be performed in this state. Under the leading North Carolina cases it is clear that the contracts out of which this cause of action arose were to be

performed in North Carolina within the meaning of G.S. §55-145(a)(1).

In Equity Associates v. The Society For Saving, 31 N.C. App. 182, 228 S.E. 2d 761 (1976), pet. for dis. rev. den., 291 N.C. 711, 232 S.E. 2d 203 (1977), a case virtually on all fours with this case, the Court of Appeals held that a foreign corporation was subject to the jurisdiction of the North Carolina courts in an action based on the alleged breach of a permanent commitment by the defendant. The plaintiff was a North Carolina partnership which had obtained a permanent commitment from the defendant (a Connecticut corporation). The plaintiff was to build a motel in North Carolina by use of construction loan funds obtained from a Massachusetts Trust. Upon the completion of the construction of the motel, the permanent commitment (to which the construction lender was a party) provided that the defendant would purchase the note from the construction lender. Upon the completion of construction, the construction lender and the plaintiff went to the offices of the defendant in Connecticut in order to close the sale of the note, but the defendant refused to honor the commitment. In response to the plaintiff's complaint, the defendant alleged that the North Carolina courts had no jurisdiction over the defendant. The defendant filed affidavits stating that it had never resided in North Carolina, had not been admitted to do business in North Carolina, that it had no agent or place of business or property in North Carolina, and that it never solicited business in this state. The defendant did admit that

its employees had visited North Carolina twice on business relating to the contract in question.

The North Carolina Court of Appeals found that it had jurisdiction over the defendant pursuant to G.S. §55-145(a)(1). The court decided that the contract had been made in North Carolina because the plaintiff was the last party to sign the commitment agreement. The court also decided that the contract was to be performed substantially in North Carolina because the motel was to be constructed in North Carolina. Equity, supra, 31 N.C. App. at page 184.

The defendant apparently contended that G.S. §55-145(a)(1) applied only to causes of action "arising" in North Carolina and that the cause of action in that case arose in Connecticut because the alleged breach had occurred there. For this argument, defendant relied on Marshville Rendering Corporation v. Gas Heat Engineer Corporation, 10 N.C. App. 39, 177 S.E. 2d 901 (1970) and R.R. v. Hunt & Sons, Inc. 260 N.C. 717, 133 S.E. 2d 644 (1963). Home Federal apparently makes this same contention in alleging that the North Carolina courts have no jurisdiction because Home Federal refused to accept the assignment of the Note and Deed of Trust in Florida. (There is no evidence that the final closing was to take place in Florida. In fact, the evidence indicates that Home Federal was requested to come to Asheville to close, and Home Federal ignored the request, forcing Chemical to come to Florida.)

The Court of Appeals specifically held that the cause of action did not have to arise in North Carolina as long as the action involved a contract that had a substantial connection with this state. The court found that the Marshville and Hunt cases were not applicable, because they were limited to a tort action. Further, the statement in Hunt was simply dicta.

The court also held that assertion of jurisdiction in that case did not violate due process requirements of the United States Constitution, because the action of the defendant met the minimal contacts requirement "such that the maintenance of the suit does not offend the traditional notions of fair play and substantial justice." (Citing International Shoe Co. v. Washington, 326 US 310, 66 S. Ct. 154 [1945].) Equity, supra, 31 N.C. App. at 186. The court concluded that:

> "It is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws....Savings has performed just such a purposeful act. It has voluntarily joined in a contract to be performed here in North Carolina. It is sufficient for the purpose of due process if the suit is based on a contract which has a substantial connection with the

> forum state." (Emphasis added.) Equity, supra, 31 N.C. App. 186.

The court also noted that it was reasonable to require the defendant to defend the action in North Carolina because the motel was in North Carolina and facts about its construction and condition would probably be at issue in the action.

The North Carolina Court of Appeals has also held that a contract to lend money to a North Carolina resident is a contract to be performed in this state. In First Citizens Bank & Trust Company v. McDaniel, 18 N.C. App. 644, 197 S.E. 2d 556 (1973), the Court of Appeals held that a foreign guarantor of a note executed by a North Carolina corporation was subject to the jurisdiction of the North Carolina courts. The action was brought by the lender against the guarantor after the borrower failed to pay the note. The court concluded that the lending of money to a North Carolina resident involved the performance of services in North Carolina:

> "We are of the opinion that clearly the lending of money to be repaid by the borrower is the rendering of a service by the lender to that borrower. It clearly follows therefrom that defendant's promise to pay the loan made by plaintiff to defendant's corporation is the promise to pay for a service rendered in this state,...." First Citizens at Page 647.

The court also held that the due process requirements were not violated because:

> "[A] single contract executed in North Carolina or to be performed in North Carolina may be a sufficient minimal contact in this State upon which to base in personam jurisdiction...." First Citizens at p. 646.

While jurisdiction was actually based upon G.S. §1-75.4(5)(b) in the First Citizens case (the defendant was an individual), the court relied upon a number of precedents in which G.S. §55-145 was construed. Furthermore, the language of G.S. §55-145(a)(1) is essentially the same as that of G.S. §1-75.4(5)(b).

See also Koppers Company, Inc. v Kaiser Aluminum & Chemical Corporation, 9 N.C. App. 118, 175 S.E. 2d 761 (1970), holding that the agreement between an Alabama bank and a Delaware corporation by which the bank was to pay the creditors of a construction company in North Carolina was a contract to be performed in this state by the bank. The construction company was a Georgia partnership which had constructed railroad siding at a plant in North Carolina. The North Carolina creditors were the subcontractors for that project.

The leading North Carolina Supreme Court case on the due process requirement is Byham v. The National Cibo House

Corporation, 265 N.C. 50, 143 S.E. 2d 225 (1965). In that case, the North Carolina Supreme Court held that G.S. §55-145(a)(1) applied to give the courts jurisdiction over a foreign corporation where the contract in question was an agreement by the North Carolina plaintiff to become a franchisee of the defendant. Although the contract was made in Tennessee (the home office of the defendant) because it was executed last by the defendant in that state, the contract was to be performed in part in North Carolina. The defendant's franchise was for North Carolina and many of the activities of the plaintiff were to be in this state in operating the franchise. Many of the defendant's activities under the contract were to take place in Tennessee. In reaching its conclusion, the court cited a number of factors, including:

> "Consideration should be given to the question whether the crucial witnesses and material evidence are to be found in the forum state...
>
> * * * * *
>
> It is sufficient for the purposes of due process if the suit is based on a contract which has substantial connection with the forum state.
>
> It is essential to determine the extent to which the legislature of the forum state has given authority to its courts to entertain litigation against foreign

> corporations...courts are recognizing, for the most part, that the statutes reflect on the part of their legislatures a conscious purpose to assert jurisdiction over non-resident defendants to the extent permitted by the due process requirement." Byham at page 57.

Finally, as stated in a number of other cases set forth above, only a partial performance in this state is necessary for the "performance in this state" standard to apply. See, for example, McCoy Lumber Industries, Inc. v. Niedermeyer-Martin Co., 356 F. Supp. 1221 (M.D.N.C. 1973), stating that even though only a relatively small percentage of the contract was to be performed in North Carolina, the amount of work performed there involved approximately $35,000, which the court found to be a substantial amount of performance in this state, sufficient to find that the contract was to be performed in this state within the meaning of G.S. §1-75.4 (5)(a) and (b), discussed infra.

As noted earlier, this action arises out of two contracts, the permanent commitment and the Letter Agreement, of which Chemical is the named beneficiary. Based on the standards set forth in the cases discussed above, and especially in the Equity case, it is clear that both of the contracts in this case were to be performed substantially in North Carolina.

In particular, Chemical has listed the numerous requirements to be performed by each of the parties in North Carolina at pages 10 through 19 of this Brief. In addition, substantially all of the witnesses concerning the performance of the contracts reside in this state.

In contending that G.S. §55-145(a)(1) cannot be constitutionally applied in this case, Home Federal argues that the Letter Agreement does not constitute a contract, because it does not require Home Federal to take any action. (Home Federal refers to the Letter Agreement as an "estoppel certificate"). On the contrary, the Letter Agreement binds Home Federal to accept the $90,000 of commitment fees from Chemical and to purchase the note and accept an assignment of the deed of trust from Chemical upon completion of the hotel, certified by Chemical's engineer, and upon issuance of certain certificates by local authorities.

Home Federal also contends that the permanent commitment and Letter Agreement were not to be performed in North Carolina, because the purchase of the note might not take place there. Wohl was invited to North Carolina to close the loan there. Chemical eventually went to Florida to attempt to close the loan. The place of closing was not specifically stated in the documents. However, on closing, Home Federal would acquire an interest in the hotel in Asheville, and the personal property associated with it, which would involve the transfer of an

interest in property and the filing of documents in this state.

Furthermore, the place of closing is especially not significant in light of the substantial activities required of Chemical, Landmark and others in North Carolina as well as the activities of Home Federal in this state in connection with this transaction. In fact the North Carolina court in the Equity case did not cite the place of the attempted closing with the permanent lender (Connecticut) as a factor in determining jurisdiction in that case.

Because the constitutional application of G.S. §55-145(a)(1) was so clear, the Court of Appeals did not discuss the other grounds for jurisdiction found by the trial court. However, that the assertion of jurisdiction was proper is equally clear under those statutes, as discussed infra.

B. Home Federal is also subject to the jurisdiction of the courts of this state under the terms of G.S. §1-75.4(5)(a) and (b), in that this action arises out of a promise to perform services and out of services actually performed in this state and to pay for services performed within this state. G.S. §1-75.4(5)(a) states that the courts of this state have jurisdiction over any defendant in an action which:

"Arises out of a promise,

> made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to perform services within this state or to pay for services to be performed in this state by the plaintiff...."

As discussed, supra, the North Carolina Court of Appeals in First Citizens Bank & Trust Company v. McDaniel, held that G.S. §1-75.4(5)(a) is constitutionally applicable to permit jurisdiction over a foreign guarantor of a note, since the lending of money to a North Carolina borrower is the rendering of a service in this state by the lender. Consequently, the agreement by the guarantor was a promise to pay for services rendered in this state, within the meaning of G.S. §1-75.4(5)(a). First Citizens at p. 647.

In addition, the United States District Court in McCoy, supra, held that G.S. §1-75.4(5)(a) is constitutionally applied in a situation where only a portion of the contract is to be performed in North Carolina.

Furthermore, the North Carolina Court of Appeals in First Citizens Bank & Trust Company v. McDaniel, supra, referred to cases decided under G.S. 55-145(a)(1) in support of its decision concerning G.S. §1-75.4(5)(a), presumably because of the similarity in

language of those statutes. Consequently, it would seem that the cases decided under G.S. §55-145(a)(1) discussed, supra, would apply in determining the meaning of G.S. §1-75.4(5)(a).

In the instant case, it is clear that Home Federal promised to pay the construction lender for having funded the construction of the hotel. That promise is expressly set forth in the Letter Agreement and is implied from the permanent commitment letter. The Letter Agreement states specifically that Home Federal will purchase the note and deed of trust from Chemical at the time of the completion of construction.

Chemical clearly performed services in this state in the form of making substantial advances to Landmark and, on occasion, directly to contractors, for the construction of the hotel called for by the permanent commitment and the Letter Agreement. In addition, Chemical also had its engineer, Merritt & Harris, inspect the project and render inspection reports. Finally, Chemical prepared the proper note and deed of trust and made the proper filings in North Carolina in order to give Home Federal the lien it required in its permanent commitment and the Letter Agreement. The hotel was constructed in North Carolina by use of the construction loan proceeds supplied by Chemical. It is therefore clear that Home Federal agreed to pay for services to be performed in this

state by the Appellee and is consequently subject to the jurisdiction of this court.

G.S. §1-75.4(5)(b) states that the North Carolina courts will have jurisdiction over any defendant in any action which:

> "Arises out of services actually performed...for the defendant by the plaintiff within this state if such performance within this state was authorized or ratified by the defendant..."

As discussed above, Chemical did perform substantial services in this state pursuant to the permanent commitment and Letter Agreement. That performance was clearly authorized by Home Federal since it is the performance specifically called for by the permanent commitment and Letter Agreement.

C. Home Federal is also subject to jurisdiction under the requirements of G.S. §1-75.4(6)(a), since the action arises out of a promise to convey and acquire an interest in real property situated in North Carolina. G.S. §1-75.4(6)(a) states that the North Carolina courts have jurisdiction over any defendant in an action which arises out of:

> "A promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to

> create in either party an interest in, or protect, acquire, dispose of, use rent, own, control or possess by either party real property situated in this state ...."

In Chadbourn, Inc. v. Katz, 285 N.C. 700, 208 S.E. 2d 676 (1974), the North Carolina Supreme Court held that a foreign defendant is subject to the jurisdiction of the courts of this state where that defendant made a promise to purchase certain real property located in North Carolina. The plaintiff had brought an action to recover for the breach of that agreement by the defendant. The court held that G.S. §1-75.4 (6)(a) quite clearly applied to that factual situation, since the defendant had agreed to acquire an interest in real property in this state and the plaintiff had agreed to dispose of that interest to the defendant. The court also held that the due process requirements of the United States Constitution were not violated, because the defendant had purposefully invoked the benefit of protection of the laws of this state by entering into a contract to purchase land here and by forming a corporation in this state to receive title to the property.

In the instant case, Home Federal agreed to acquire an interest in the hotel by becoming the holder of a deed of trust transferring title to the hotel and Chemical agreed to assign its interest in the hotel to Home Federal under the letter agreement.

In addition to the other actions described above, Home Federal has invoked the benefit of the laws of North Carolina by requiring Chemical to perfect a first lien against the real property in question. That lien was obtained by proper filings with the Clerk of Court of Buncombe County.

D. Home Federal is subject to the jurisdiction of the North Carolina courts pursuant to G.S. §55-145(a)(2) in that this action arose out of business solicited by Home Federal in North Carolina, at a time when it was soliciting other business. G.S. §55-145(a)(2) states that a foreign corporation is subject to suit in this state on any cause of action arising:

> "Out of any business solicited in this state by mail or otherwise if the corporation has repeatedly so solicited business, whether the orders or offers relating thereto were accepted within or without the state ...."

This action arises out of business solicited by Home Federal in this state. While it appears that the initial contact

with Home Federal for the Landmark loan was made by Atlantic or a New York broker, neither of those brokers represented Landmark. In fact, Thomas Wharton testified at his deposition that Atlantic represented Home Federal. Acting on behalf of Home Federal, Atlantic set up the initial meeting with Crawford to reach agreement on the terms of a permanent commitment. Home Federal actually made the offer to Landmark for the permanent commitment by sending the commitment letter to Atlantic for Crawford's approval. That offer was accepted by Crawford.

During this same period, Wohl had requested that Atlantic continue to be on the lookout for other loans for Home Federal in North Carolina and had encouraged Atlantic to find such loans. Pursuant to that request, Atlantic discussed numerous possible loans with Home Federal. Atlantic showed Wohl some apartments in Charlotte, North Carolina.

In fact, Home Federal, at about that same time, entered into a permanent commitment and permanent loan on an apartment project in Jacksonville, North Carolina. The owners of the property and the borrowers in that case were the Beachams. That transaction is discussed in detail in the deposition of Thomas Wohl, who admitted that the Landmark and Beacham loans were obtained pursuant to Home Federal's "nationwide lending program".

Based on the solicitation of the Landmark loan and the repeated solicitations during that same time by Atlantic on behalf of Home Federal, Home Federal is subject to the jurisdiction of the North Carolina courts under the terms of G.S. §55-145(a)(2).

E. Home Federal is also subject to the jurisdiction of the North Carolina courts based on the terms of GS §1-75.4(1)(d) and GS §55-144. GS §1-75.4(1)(d) states that the North Carolina courts will have jurisdiction over a defendant in any action:

> "Whether the claim arises within or without this state in which a claim is asserted against a party who when service of process is made upon such party:
>
> * * * * *
>
> (d) is engaged in substantial activity within this state, whether such activity is wholly interstate, intrastate, or otherwise."

The meaning of "substantial activity" under this statute is as broad as the "minimum contacts" requirement of due process. See Dillon vs. Numismatic Funding Corporation, 291 N.C. 674, 231 S.E. 2d 629 (1977). Clearly the numerous activities of Home Federal described above, constitute substantial activity within this state.

GS §55-144 provides that North Carolina courts have jurisdiction over any corporation "transacting business" in North Carolina, regardless of whether it has a certificate of authority to do so. The North Carolina Supreme Court has held that a corporation is deemed to be transacting business under North Carolina law for jurisdictional purposes, if the corporation is "engaging in, carrying on, or exercising, in this state, some of the things, or some of the functions, for which the corporation was created." Ruark vs. Virginia Trust Co., 206 N.C. 564, 174 S.E. 441 (1934). And see State Highway And Public Works Commission of North Carolina vs. Diamond Steamship Transportation Corporation, 225 N.C. 198, 34 S.E. 2d 73 (1945), to the same effect.

F. Home Federal's "minimum contacts" cases are not applicable to this action.

Home Federal discusses at great length in its jurisdictional statement a number of cases concerning the "minimum contacts" requirement of the due process clause. Chemical has discussed the due process requirement in the above sections in the context of the various long-arm statutes. It is clear, based on the cases cited by Chemical, that Home Federal has ample contacts with North Carolina to satisfy the due process requirement. For example, as discussed in detail, supra, this action is based upon contracts made in this state, contracts to be performed in this state by all of the parties, and contracts

involving the transfer of an interest in land located in North Carolina from Chemical to Home Federal, which interest is represented by filings made in North Carolina by Chemical pursuant to Home Federal's requirements in the Letter Agreement.

None of the cases cited by Home Federal contains all of the substantial contacts present in the instant case. Home Federal's brief fails to relate the cases to the particular long-arm statutes in question, and thus discusses the minimum contacts issue in the abstract. Significantly, Home Federal cites for support only one North Carolina state court case. All of the other cases relied upon by Home Federal are federal court opinions.

Chemical will briefly highlight the reasons why each of the cases relied upon by Home Federal has no applicability to the instant case. A reading of all of the cases cited by Home Federal simply reinforces Chemical's contention that the question of whether assertion of jurisdiction is "fair" depends upon the facts in each case, and that such determination is primarily the role of the state courts.

Home Federal appears to base its primary reliance for support on Shaffer vs. Heitner, 433 U.S. 186, 97 S. Ct. 2569 (1977). That case has no relevance to the instant case. The plaintiff brought an action in Delaware against non-resident directors and officers of a Delaware

corporation, alleging breach of fiduciary duty to the Delaware corporation. Apparently, the corporation's principal place of business was not in Delaware, although it was incorporated there. Under a Delaware statute, the plaintiff sequestered certain Delaware property (stock and stock options in the corporation) belonging to the defendant. The Delaware courts found that Delaware had jurisdiction over the defendants, based solely upon the fact that the defendants had property in Delaware which had been sequestered pursuant to the Delaware statute. This court held that where jurisdiction is based solely upon the sequestration of property located in the state, which property does not relate to the underlying cause of action, the minimum contacts requirement has not been met.

The court emphasized that the basis for jurisdiction was defective because it was founded solely upon the sequestration statute, and did not relate to the activities of the defendants as officers and directors of the corporation. In fact, the court simply applied the standard test of whether assertion of jurisdiction offended "traditional notions of fair play and substantial justice", which is the same test applied by the North Carolina courts in the cases relied upon by Chemical.

The holding of this court in Shaffer, clearly has no relevance to the instant case, since it did not even involve a long arm statute similar to any of those relied upon by Chemical.

In Kulko vs. Superior Court of California, 436 U.S. 584, 98 S. Ct. 1690 (1978), this court held that the state courts of California could not assert jurisdiction over a resident of New York in an action by a divorced mother (residing in California) against the father (residing in New York). The purpose of the action was to obtain the modification of the terms of a separation agreement between the parties which had been incorporated in a divorce decree obtained in Haiti. No long-arm statutes similar to those asserted in the instant case were involved. The court held that the father did not have sufficient minimum contacts with the State of California, because the separation agreement was made in New York, the father had no connection with California (other than spending three days there almost twenty years before, at which time he married the plaintiff while on military leave), and there was no evidence that the defendant obtained any benefits whatsoever from any activities taking place in the State of California.

In Piracci vs. New York City Employees' Retirement System, 321 F. Supp. 1067 (D. Md. 1971), the district court held that it did not have jurisdiction over a New York pension fund for failure to fulfill a commitment to lend money to

a Maryland developer. The only long-arm statute relied upon by the plaintiff in that case provided for jurisdiction if the defendant was "transacting business" in Maryland. Although the court referred to the due process clause, the actual holding of the court was that the particular state statute required that the cause of action arise out of business actually transacted by the defendant in Maryland.

The court found that the defendant had not transacted business in Maryland in that case because there had been no solicitation in Maryland by the defendant, and the agreement sued upon by the plaintiff had been made in New York (in contrast to the instant case, in which the permanent commitment was solicited and negotiated in North Carolina, and the permanent commitment and letter agreement were made in North Carolina). Furthermore, the defendant in that case did not have the substantial additional contacts with the forum state that Home Federal has in the instant case. The court did not deal with a specific long-arm statute granting jurisdiction over a claim arising out of contracts to be performed in that state. In fact, the outcome may have been different if it had, since the court specifically found that the loan commitment had a substantial connection with Maryland. Since it found that the "transacting business" statute did not apply to the defendant in that case, the court stated that it was not deciding whether the defendant had a substantial

enough connection with the forum state to make the exercise of jurisdiction "reasonable".

In Golden Belt Manufacturing Company vs. Janler Plastic Mold Corporation, 281 F. Supp. 368 (M.D.N.C. 1967), the federal district court held that the defendant did not have sufficient minimum contacts with the State of North Carolina for jurisdictional purposes, where the purchase order in question was accepted by the defendant in Illinois, the goods were manufactured in Illinois, and the goods were delivered to the plaintiff in Illinois, when they were shipped f.o.b. Chicago. There was no evidence that the defendant had any other contacts with North Carolina in any manner, either in connection with the contract at issue or in connection with any other transaction.

In United Advertising Agency, Inc. vs. Robb, 391 F. Supp. 626 (N.D.N.C. 1975), an advertising agency was suing its client in North Carolina for alleged services in preparing certain advertisements for the client. The federal district court held that it could not assert jurisdiction over the defendant because there was no evidence of any contacts between the defendants and North Carolina, the advertisements in question were to take place only in Missouri and Kansas, the defendants derived no benefit and had no possibility of deriving any benefit from the laws of North Carolina, since North Carolina was not involved in the advertisements, the services of the plaintiffs could have been performed

anywhere, there was no evidence that the defendants were ever in the State of North Carolina, and there was no intent on the part of the defendants to advance their contacts with this state. The court stated that it would have been important to determine where the contract was made, or where the negotiations took place for the contract. However, there was no evidence on either of those points. In addition, the court found that, although some services were to be performed in North Carolina, those services were not "substantial", since they only involved fees of $13,000.

In Staley v. Homeland, Inc., 368 F. Supp. 1344 (E.D.N.C. 1974), the plaintiffs, while residing in Florida, purchased mobile homes from the defendant. At the time of the sale, there was no connection with the State of North Carolina. The plaintiffs subsequently moved to North Carolina. The court held that it could not assert jurisdiction over the defendant seller in an action for fraud committed in connection with those sales, because the defendant seller was no longer the owner of the contracts, the contracts had been performed completely in Florida, the transaction had no connection with North Carolina at the time it was entered into, and the defendant made no attempt to benefit from the laws of North Carolina.

In discussing the law relating to jurisdiction, the court held that it could constitutionally assert jurisdiction if there had been any evidence that the

defendant had benefited from the laws of North Carolina or used the laws of North Carolina in any manner, or if the contract was to have been performed in North Carolina or had a substantial connection with this state. In fact, the court held that it did have jurisdiction over the defendant bank (which had purchased the sales contract from the defendant seller), because the bank had security agreements on items of personal property in North Carolina and, consequently, was invoking the benefit of the laws of North Carolina and had the ability to benefit from the laws of North Carolina in enforcing those agreements. (However, the venue was not proper as to the bank, because of the National Bank Act venue statute.)

In Munchak Corporation vs. Riko Enterprises, Inc., 368 F. Supp. 1366 (M.D.N.C. 1973), the federal district court found that there were not sufficient minimum contacts, where the plaintiff alleged that the defendant had interfered with the plaintiff's contractual relationship with William Cunningham, a basketball player. The defendant was a Pennsylvania corporation. The court found that the only contacts between the defendant and the State of North Carolina were that: the defendant had been involved in an action filed by the plaintiff against Cunningham in North Carolina, the defendant sent basketball scouts into the State of North Carolina (which had no relationship to the instant action), and the games of a basketball team owned by the defendant in Philadelphia

were televised in North Carolina pursuant to a contract between a national television network and the National Basketball Association. The court found that there were no other activities of the defendant in North Carolina, either relating to the specific tort in question, or otherwise. Clearly such contacts fall far short of the activities of Home Federal in the instant case.

In Andrews Associates vs. Sodibar Systems of D.C., Inc., 28 N.C. App. 663, 222 S.E. 2d 922 (1976), pet. for dis. rev. den., 289 N.C. 726, 224 S.E. 2d 676 (1976), the North Carolina Court of Appeals held that there were not sufficient minimum contacts, when the contract for the sale of goods by plaintiff to the defendant was made in Washington, D. C. at the time the plaintiff called upon the defendant there. There was no evidence that the defendant had ever entered North Carolina for any reason, or that there were any negotiations or dealings by the defendant in North Carolina, or even relating to North Carolina, other than the single shipment by common carrier by plaintiff from North Carolina to the defendant. The court distinguished Byham, supra, cited by Chemical in this action, on the ground that the defendant had reserved the right in that case to control various activities that occurred in North Carolina, such as establishing procedures, inspecting books and operations, and selecting the location of the franchise. The court stated that Chadbourn, supra, also relied upon by Chemical, did not apply because the action "does not involve real property in this state."

The instant case is obviously different from Andrews, since the contracts relied upon in the instant case were made in North Carolina, there were substantial negotiations through a North Carolina broker who was representing Home Federal, and substantial activities by both Chemical and the borrower took place in North Carolina in order to fulfill the requirements set by Home Federal. Home Federal visited North Carolina on several occasions in connection with this project and maintained control over numerous activities in North Carolina, requiring the obtention of liens, inspections by Chemical, approving appraisals, surveys, and even the plans and specifications for the hotel. Furthermore, this action clearly involves a breach of contract by Home Federal to purchase an interest in North Carolina real estate from Chemical.

Finally, Home Federal attempts to distinguish the Equity case, supra, primarily on the ground that the plaintiff in that case was a North Carolina partnership. On the contrary, the residence of the plaintiff in the Equity case had no bearing on the question of whether there was jurisdiction over the defendant. The Equity court did not cite that as a factor. (In fact, the requirement that the plaintiff must be a North Carolina resident in order to take advantage of GS §55-145 was specifically deleted by the North Carolina legislature in a 1973 amendment to that statute.)

Home Federal also attempts to distinguish Equity on the ground that the loan agreement in that case was a "tri-partite" loan agreement between the borrower, permanent lender, and construction lender. The two contracts in the instant case perform exactly the same function as a tri-partite agreement, creating direct contractual obligations among all the parties. Home Federal's only other attempt to distinguish the Equity case is to the effect that the Court of Appeals "erroneously" held that the contract in that case was to be performed in North Carolina. However, the clear facts in the Equity case, and in the instant case, show that the contracts required performance of their essential terms in North Carolina, including construction and financing of the hotel, making inspections and obtaining a first lien and deed of trust on the hotel.

II. GS §55-145(a)(1) is clear and consistent with the corporate law of North Carolina and thus is "fair" in its application to Home Federal.

Home Federal contends at paragraph II (page 39) of its jurisdictional statement that the application of GS §55-145 (a)(1) is "unfair" in that it is contradictory to GS §55-131(b)(6).

GS §55-131 is entitled "Right To Transact Business." Subparagraph (a) of that section requires a foreign corporation to procure a certificate of

authority from the Secretary of State of North Carolina before it "transacts business" in this state.

Subparagraph (b)(6) provides that a foreign corporation shall not be considered to be transacting business in this state, for the purpose of that chapter (Chapter 55) by reason of "making or investing in loans" through independent agencies within this state.

The obvious purpose of the statute is to exempt foreign corporations from the requirement of obtaining a certificate of authority to do business in North Carolina, if they are involved in certain activities in this state. The statute has no reference to the question of whether a foreign corporation might be subject to suit in this state. It is well established that the standards for being required to register to do business in a state are much more strenuous than the standards required for being subject to suit in that state.

Home Federal contends that GS §55-145(a)(1) is contradictory with GS §55-131(b)(6), if the court permits jurisdiction to be asserted over Home Federal in this case. On the contrary, GS §55-145(a)(1), as revealed by its title, clearly deals with "jurisdiction over foreign corporations not transacting business in this state." (Emphasis added)

More specifically, GS §55-145(a)(1) states that every foreign corporation shall be subject to suit in North

Carolina, whether or not such corporation is transacting or has transacted business in this state, in any cause of action arising out of a contract made in this state or to be performed in this state. There is no conflict between GS §55-145 and GS §55-131. GS §55-145 specifically applies to corporations which may not be transacting business in North Carolina. Consequently, GS §55-145 applies whether or not a corporation is deemed to be transacting business for purposes of GS §55-131.

Furthermore, the titles of the two sections makes it clear that they are enacted for entirely different purposes.

In any event, the North Carolina Court of Appeals in the Equity case, supra, has specifically concluded that an out-of-state permanent lender, under circumstances substantially identical to the instant case, is subject to the jurisdiction of this state under GS §55-145(a)(1), and that such assertion of jurisdiction does not offend the "traditional notions of fair play and substantial justice."

It should also be noted that, as discussed above, there are numerous other long-arm statutes in North Carolina which are not a part of Chapter 55, and which clearly subject the defendant to jurisdiction in this state.

CONCLUSIONS

For the reasons set forth in this motion and brief, Chemical respectfully requests that the appeal of Home Federal be dismissed, or, in the alternative, that the judgment of the North Carolina courts be affirmed.

Respectfully submitted this 2nd day of November, 1979.

Joseph W. Grier, Jr.
Sydnor Thompson
Fred T. Lowrance
Attorneys for Appellee
Chemical Realty Corporation

Of Counsel:

GRIER, PARKER, POE, THOMPSON,
BERNSTEIN, GAGE & PRESTON
1100 Cameron-Brown Building
Charlotte, N. C. 28204
Telephone: 704 372-6730

EXHIBIT A

STATE OF NORTH CAROLINA COUNTY OF BUNCOMBE	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
CHEMICAL REALTY CORPORATION, Plaintiff, v. HOME FEDERAL SAVINGS & LOAN ASSOCIATION, Defendant.	76 CvS 02491 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

THIS CAUSE coming on to be heard and being heard before the undersigned Judge Presiding on August 26, 1977, at the Buncombe County Courthouse, Asheville, North Carolina, upon the motion of the defendant, dated January 18, 1977, to dismiss the complaint or to change the venue of this action, and upon the motion of the plaintiff, dated May 4, 1977, to amend its complaint and summons.

This action was commenced on December 20, 1976, by the plaintiff, Chemical Realty Corporation ("Chemical"), in the Superior Court of Buncombe County, North Carolina. On January 18, 1977, the defendant, Home Federal Savings & Loan Association of Hollywood ("Home Federal"), filed a motion to dismiss the complaint on the grounds, in general, that (1) the Court lacks jursidiction over the subject matter

of this action; (2) the Court lacks jurisdiction over the person of the defendant; (3) no proper service of process has been obtained on defendant; and (4) the Court should transfer this action to the appropriate court of Broward County, Florida.

The president of Home Federal stated in his deposition taken in this action that Home Federal's only objection to the service of process was that the named defendant was Home Federal Savings & Loan Association, rather than Home Federal Savings & Loan Association of Hollywood, which is the correct name of the defendant.

On May 5, 1977, the plaintiff moved to amend its complaint and summons to change the name of the defendant from Home Federal Savings & Loan Association to Home Federal Savings & Loan Association of Hollywood.

Upon being advised subsequent to the hearing of August 26, 1977, that the court had decided to deny the defendant's motion to dismiss or for change of venue and to grant the plaintiff's motion to amend its complaint and summons, the defendant requested that the court make findings of fact and conclusions of law in support of its order.

Upon consideration of the pleadings, affidavits, depositions, and exhibits thereto, the court makes the following

FINDINGS OF FACT:

1. Plaintiff is a New York corporation, with its principal office in New York, New York, and is engaged in the business of making construction and other types of real estate loans;

2. That in the early spring of 1972, Asheville Development Associates, a North Carolina partnership composed of F. Earl Crawford, Jr. ("Crawford") and others, proposed to build a hotel in downtown Asheville, North Carolina;

3. That Crawford began looking for a permanent lender for the project. He was contacted by Atlantic Mortgage & Investment Company in Winston-Salem, North Carolina, a mortgage brokerage company, which agreed to help him find such a lender. In the very early spring of 1972, a New York brokerage company put Atlantic and Crawford in touch with Home Federal, a corporation, organized under the Acts of Congress, registered as a federal savings and loan association located in Hollywood, Florida;

4. That Home Federal has not applied for nor procured any certificate of authority to transact business in the State of North Carolina; Home Federal has not established nor maintained any registered office in the State of North Carolina, nor appointed any agent nor designated any person upon whom any process, notice or demand required or permitted by law to be served upon it in the State of North Carolina may be

served;

5. That some preliminary communications took place between Atlantic, Crawford, and Home Federal relating to the proposed hotel project. J. P. Lauffer, the president of Atlantic, then arranged a meeting in Asheville between Thomas Wohl, the president of Home Federal, Crawford, Lauffer, and perhaps others. At the meeting, Wohl inspected the proposed hotel site and then proceeded to negotiate the terms of the permanent loan with Crawford. All of the principal terms of the permanent loan were decided upon at the meeting in Asheville, e.g., the principal amount, the interest rate, the term, the commitment fees, the length of the commitment, and the security for the loan;

6. That when Wohl returned to Florida, he prepared the permanent commitment letter, dated April 14, 1972, and delivered it to Atlantic for forwarding to Crawford for approval and execution by him. A copy of that commitment letter is attached to the plaintiff's complaint in this action as Exhibit A;

7. That the original permanent commitment letter provided, inter alia, that an appraisal be obtained on the real estate which would indicate a value of not less than $8,000,000; that the hotel be constructed in accordance with working plans and specifications approved by Home Federal; that Home

Federal receive a valid first lien on real estate and that title insurance be obtained with respect to that real estate; that the borrower pay a $60,000 commitment fee to keep the commitment in effect for a period of one year and that thereafter the commitment could be extended for additional six-month periods upon the payment of $30,000 for each six-month extension; that certain local governmental approvals of the project be obtained; and that a portion of the loan be personally guaranteed by Earl Crawford and the other members of the partnership and their spouses;

8. That Atlantic forwarded the commitment to Crawford in Asheville for his approval and execution. Crawford approved the offer of Home Federal in Asheville, executed a copy and delivered the executed copy of the commitment letter, together with the $60,000 commitment fee, to Michael Burroughs of Atlantic in Asheville. Burroughs then mailed the acceptance and fee to Home Federal from Winston-Salem, North Carolina;

9. That the original permanent commitment was modified on May 24, 1972, by the letter attached to the complaint as Exhibit B1;

10. That in the summer of 1972, Home Federal objected to the proposed management contract of the proposed management company, Hyatt House Hotel Corporation. Consequently, Crawford began

looking for a substitute management company. In October 1972, Wohl met with Crawford, Atlantic, and certain principals of Motor Inn Management Company, to discuss the possibility of Motor Inn Management's being engaged as the management company for the proposed hotel. That meeting took place in Charlotte. Subsequent to that meeting, on November 13, 1972, Home Federal accepted Motor Inn Management Company as the management company for the hotel;

11. That in late November 1972, Chemical was approached by a New York brokerage firm, Cooper-Horowitz, and asked to become the construction lender for the project. Chemical met with Crawford, Michael Burroughs of Atlantic, and a representative of Cooper-Horowitz. Chemical was informed that Home Federal had made a "take-out" commitment and was provided with a copy of it;

12. That relying upon the permanent commitment from Home Federal, Chemical issued a construction loan commitment on December 18, 1972. Chemical then undertook to negotiate an agreement with Home Federal in order to make certain of the circumstances under which Chemical would be paid off by Home Federal. Those negotiations were handled through Atlantic, primarily by Thomas Wharton, who was representing Home Federal in the negotiations. Home Federal was informed by Atlantic that Chemical required that the terms of the

take-out be finalized before the construction loan was closed;

13. That on or about the first of April, 1973, primarily through telephone conversations which each had with Wharton, Chemical and Home Federal agreed upon substantially all of the terms of the take-out. The terms of that agreement were reduced to writing in a letter prepared by Wharton in his office in Winston-Salem. The letter was delivered personally by Wharton to Home Federal in Hollywood, Florida, was executed by Home Federal and handed over to Wharton, and was then delivered personally by Wharton to Chemical in New York,. That is defendant's Exhibit 27 (the "Letter Agreement");

14. That under the terms of the Letter Agreement, Home Federal agreed, inter alia, that construction of the hotel in substantial compliance with the plans and specifications as certified by Merritt & Harris, Inc., the engineer retained by Chemical, would satisfy the construction conditions of the permanent commitment; that Home Federal would accept from Chemical a $90,000 commitment fee to extend the permanent commitment until October 14, 1974; that Home Federal had approved the first mortgage real estate note and deed of trust attached to the Letter Agreement; that Home Federal had reviewed the construction note and deed of trust; and that Home Federal would purchase the first real estate note from Chemical without recourse

and accept an assignment of the deed of trust on the hotel, provided the loan was not in default under the terms of the permanent commitment and the permanent lender's loan documents;

15. That just prior to the signing of the Letter Agreement, Home Federal acknowledged to Earl Crawford that the permanent loan would be made to Landmark Hotel, Inc., a North Carolina corporation;

16. That the Letter Agreement lists various actions taken to that date by Landmark under the permanent commitment, including, inter alia, obtaining the required appraisal, surveys, and plans and specifications, which actions Home Federal approved in the Letter Agreement;

17. That Chemical then closed the construction loan on April 13, 1973. Subsequently, Chemical forwarded to Home Federal a total of $90,000 in commitment fees in order to extend the permanent commitment through October 14, 1974. Of that fee, $30,000 was forwarded directly to Home Federal's depository bank in Hollywood, and $60,000 was delivered to Atlantic which, in turn, forwarded the fee to Home Federal;

18. That Chemical recorded the deed of trust with the Register of Deeds of Buncombe County and recorded the financing statements, reflecting a security interest in the personal

property in the hotel, with the Register of Deeds of Buncombe County and with the Secretary of State of North Carolina;

19. That Landmark began construction of the hotel shortly after the construction loan closing. Chemical made monthly advancements to Landmark to pay for the construction of the hotel in a total amount of approximately $4,500,000. Some of the monthly checks were payable jointly to Landmark and to the various contractors involved in the project;

20. That during the course of construction, Chemical's engineer, Merritt and Harris, inspected the construction on a monthly basis and certified the percentage of completion;

21. That Home Federal employed a North Carolina attorney to certify that it would have a first lien on the hotel upon purchase of the note and deed of turst from Chemical;

22. That in October, 1973, Home Federal entered into a servicing agreement with Atlantic, pursuant to which Atlantic was to service this loan and other loans for Home Federal after the permanent loan had closed. Payments on any Home Federal loan were to be made by the borrower to Atlantic in North Carolina, and then forwarded to Home Federal by Atlantic after the servicing fee had been deducted. The

Landmark permanent loan note, attached to the Letter Agreement, required Landmark to make its payments through Atlantic in Winston-Salem.

23. That during the course of construction, Atlantic communicated with Home Federal on a number of occasions about various items relating to the Landmark project. In June, 1974, Thomas Wohl visited the construction site and inspected the hotel. Thereafter various conversations and correspondence took place between Atlantic, Chemical, and Landmark concerning the hotel and the permanent commitment;

24. That the hotel opened for business in July, 1974, although construction was still being completed on some floors of the hotel;

25. That in late September, 1974, Crawford informed Atlantic and Home Federal that the terms of the permanent commitment had been or were being fulfilled and that Landmark and Chemical were ready to close the permanent loan. Crawford requested that the closing took place in Asheville. Crawford received no response to that request;

26. That a Certificate of Occupancy was obtained from the appropriate Asheville authorities and Chemical's engineer, Merritt & Harris, Inc., inspected the hotel and certified that it was completed in substantial

compliance with the plans and specifications;

27. That the hotel shut down operations on October 9, 1974;

28. That Chemical then informed Home Federal that it would close the permanent loan with Home Federal at Home Federal's office. Chemical's representative met with Tom Wohl and his attorney in Hollywood on October 14, 1974, taking with them, among other things, the assignment of the deed of trust on the hotel and the assignment of the financing statements. At that time, Home Federal refused to close the permanent loan, stating that the hotel was closed;

29. That Home Federal requested that Atlantic be on the lookout for other loans in North Carolina for Home Federal and Atlantic has made numerous proposals to Home Federal for loans in North Carolina. Through the offices of Atlantic, Home Federal entered into a permanent commitment with the Beachams in Jacksonville, North Carolina, in 1973, and subsequently made a $2,500,000 loan to the Beachams, secured by a deed of trust on the Beachams' apartment project in Jacksonville, North Carolina. The deed of trust was filed in the Register of Deeds of Onslow County. That loan is currently in effect and is being serviced by Atlantic;

30. That on December 20, 1976, Chemical commenced this action against Home Federal based on allegations that Chemical has been damaged by the wrongful refusal of Home Federal to accept the assignment of the deed of trust and financing statements;

31. That five depositions have already been taken in this action. Based on those depositions, it appears that a number of witnesses who reside in North Carolina may be material witnesses at the trial of this action;

32. That Home Federal regularly does not use the phrase "of Hollywood" on its stationery;

33. That Home Federal received the complaint and summons in this action and knew that the summons and complaint were meant for it, despite the fact that the phrase "of Hollywood" did not appear as a part of its name in the complaint and summons;

34. That Home Federal has not been prejudiced by the omission of the phrase "of Hollywood" on the complaint and summons.

BASED ON THE FOREGOING FINDINGS OF FACT, THE COURT MAKE THE FOLLOWING

CONCLUSIONS OF LAW:

1. That the permanent commitment

between Landmark (or its predecessor) and Home Federal is a contract;

2. That the offer of a permanent commitment was accepted in North Carolina, and the contract was made in North Carolina;

3. That Chemical is a third party beneficiary of the permanent commitment;

4. That the permanent commitment was to be performed substantially in North Carolina, in part by Landmark and in part by Chemical;

5. That the Letter Agreement (Defendant's Exhibit 27) is a contract between Chemical and Home Federal which was to be performed substantially in North Carolina by Chemical;

6. That Chemical performed a substantial number of services in North Carolina pursuant to the Letter Agreement and permanent commitment;

7. That this Court has subject matter jurisdiction over this action;

8. That this action arises out of a contract made or to be performed in this state within the meaning of G.S. Sec. 55-145 (a)(1);

9. That this action arises out of a promise made to Chemical and to Landmark for Chemical's benefit, by Home Federal to pay for services to be performed in this state by Chemical

within the meaning of G.S. Sec. 75.4(5)(a);

10. That this action arises out of services actually performed by Chemical for Home Federal within this state within the meaning of G.S. Sec. 1-75.4(5)(b), and such performance was authorized by Home Federal;

11. That this action arises out of a promise made to Chemical and to Landmark for Chemical's benefit by Home Federal to have Chemical create an interest in real property and for Home Federal to acquire an interest in real property situated in this state within the meaning of G.S. Sec. 1-75.4(6)(a);

12. That Home Federal was engaged in substantial activity within this state within the meaning of G.S. Sec. 1-75.4(1)(d) at the time process was served on it in this action;

13. That Home Federal was transacting business in North Carolina within the meaning of G.S. Sec. 55-144 at the time this cause of action arose and at the time process was served on it;

14. That this action arose out of business solicited by Home Federal within this state and Home Federal has repeatedly so solicited business here within the meaning of G.S. Sec. 55-145(a)(2);

15. That this Court has jurisdiction over the defendant in this action;

16. That service of process on the defendant was proper;

17. That this Court has no power to transfer this action to Broward County, Florida, and the venue of this action is properly laid in Buncombe County, North Carolina.

BASED ON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS HEREBY ORDERED AND DECREED that the motion of the defendant to dismiss for lack of jurisdiction or for change of venue is DENIED, and the motion of plaintiff to amend its complaint and summons is GRANTED.

This 1st day of October, 1977.

s/ HARRY C. MARTIN
Senior Resident Superior Court Judge
28th Judicial District

Home Federal Savings and Loan Association of Hollywood EXCEPTS and OBJECTS to the signing and entry of the above Order.

s/ HARRY C. MARTIN
Senior Resident Superior Court Judge
28th Judicial District

Home Federal Savings and Loan Association of Hollywood's oral notice of appeal, given by its attorney of record, John E. Raper, Jr., on the date hereof, is hereby noted. Further notice is waived. The defendant is allowed the time provided by statute in which to serve the case on appeal on the plaintiff, and the plaintiff is allowed thereafter the time provided by statute in which to serve a counter-case upon the defendant. Appeal bond is set at $200 for the defendant.

This 1st day of October, 1977.

s/ HARRY C. MARTIN
Senior Resident Superior Court Judge
28th Judicial District

EXHIBIT B

No. 170 PC TWENTY-EIGHTH DISTRICT

SUPREME COURT OF NORTH CAROLINA
Spring Term 1979

* * * * * * * * * * * * * * * * * *

CHEMICAL REALTY CORPORATION)
)
v.) JUDGMENT
) DISMISSING
HOME FEDERAL SAVINGS AND) APPEAL ON
LOAN ASSOCIATION OF) MOTION OF
HOLLYWOOD) PLAINTIFF
) AND DENYING
) PETITION FOR
) DISCRETION-
) ARY REVIEW
) (7828SC420)
)

* * * * * * * * * * * * * * * * * *

This matter came on to be considered upon defendant's notice of appeal from the North Carolina Court of Appeals, pursuant to G.S. 7A-30, upon the plaintiff's motion to dismiss the appeal for lack of a substantial constitutional question, and upon defendant's petition for discretionary review of the decision of the North Carolina Court of Appeals, pursuant to G.S. 7A-31; upon consideration whereof, it is adjudged by the Court in conference this 28th day of June, 1979, that the motion to dismiss the appeal be allowed, that the petition for discretionary review be denied, and that it be so certified to the North Carolina Court of Appeals.

It is considered and adjudged further that the Defendant do pay the sum of NINE AND NO/100 DOLLARS ($9.00) and execution issue therefor.

s/ Brock, J.
For the Court

The foregoing order is issued over my hand and the seal of the Supreme Court this 5th day of July, 1979.

s/
John R. Morgan
Clerk of the Supreme Court
of North Carolina

cc: North Carolina Court of Appeals
McCoy, Weaver, Wiggins, Cleveland & Raper, Attorneys at Law
Grier, Parker, Poe, Thompson, Bernstein, Gage & Preston, Attorneys at Law

EXHIBIT C

HOMES FEDERAL SAVINGS AND LOAN
1720 Harrison Street
P. O. Box 2168
Hollywood, Florida 33022

Chemical Realty Corporation
277 Park Avenue
New York, New York 10017

Our $6,000,000 mortgage loan commitment to Landmark Hotel, Inc. (the Borrower) dated April 14, 1972, as modified by our letters dated May 24 and November 13, 1972 and March 28, 1973 (collectively the Commitment), covering the Premises at Woodfin and College Streets, Asheville, North Carolina.

Gentlemen:

This is to confirm that the Commitment and amendments, copies of which are attached hereto, is in full force and effect as of the date hereof, that there have been no modifications thereof and that no modifications shall be made without your consent and pursuant to such commitment. This is to confirm that:

1. We have received, in full satisfaction of the terms of paragraph numbered 1 of the Commitment, an MAI appraisal indicating a value in the Premises, upon completion of the improvements of at least $8,000,000;

2. We have reviewed the Chicago Title Insurance Company commitment for Title Insurance No. 73-U-00006 attached hereto as marked up with deletions crossed

through and additions noted thereon; Chicago Title Insurance Company is acceptable to us as the title insurer and policy to be issued to us pursuant to paragraph 5 of our commitment with exceptions for:

a. Easements and rights of way for public utilities and adjoining public roads and ways, their construction and maintenance,

b. Covenants with respect to use of realty for commercial purposes, off-street parking and loading, and landscaping,

c. City and county taxes and assessments, and

d. Restrictions with respect to signs, discrimination in either sales, leases, or rentals and noxious or offensive activities,

will be satisfactory and acceptable by us.

3. We have approved the plans and specifications listed on the sheet attached hereto and agree that construction of the improvements in substantial compliance therewith, as certified by your supervising engineer, Merritt & Harris, Inc., shall satisfy the construction conditions of the Commitment, and we agree that the substantial furnishing and equipping of the improvements in accordance with the schedule attached hereto will meet the assumptions made in the feasibility report referred to

in the Commitment and will satisfy the requirements of the second sentence of paragraph numbered 2 of the Commitment;

4. We have found acceptable and approved the Management Contract dated December 26, 1972 between Asheville Development Associates and Motor Inn Management, Inc. as assigned to the Borrower satisfying the terms of paragraph numbered 4 of the Commitment.

5. We have received the $60,000 commitment fee referred to in paragraph numbered 8 of the Commitment and agree that we will accept from you the additional $90,000 commitment fee at the closing of the construction loan whereupon the Commitment will be automatically extended to October 14, 1974;

6. The issuance of (a) the Certificate of Completion referred to in Section 307 of the Contract for Sale of Land For Private Redevelopment by and between Overland Investments, Ltd. and Housing Authority of The City of Asheville and (b) a Certificate of Occupancy, will satisfy the conditions of paragraph numbered 9(a) of the Commitment;

7. The provisions for automatic termination of the Commitment contained in paragraph 9(c) of the Commitment are waived until such time as we have received an assignment of the Deed of Trust, said provisions being intended to be incorporated in your loan documents;

8. The condition of our commitment

contained in paragraph numbered 1 of the May 24, 1972 letter modification is hereby waived;

9. The survey of the Premises attached hereto is satisfactory to us and survey changes made in connection with the completion of the improvements, including easements for utilities designed to service the Premises shall not constitute objectionable matters of survey;

10. We have approved, in all respects the First Mortgage Real Estate Note and Deed of Trust, copies of which are attached hereto, and agree that at the appropriate time, as provided in the Commitment, we will purchase said First Real Estate Note from you, without recourse, and accept the assignment of said Deed of Trust provided however that the loan is not in default under the terms of our Commitment or our loan documents. We have also approved the form of the assignment of the Deed of Trust to be made by you to us, a copy of which is attached hereto.

11. We have reviewed the Construction Note and Construction Deed of Trust attached hereto including the language incorporating therein the First Mortgage Real Estate Note and Deed of Trust referred to in 10 above. We understand that the Guaranty and Endorsement on the Construction Note will be executed at the closing of your construction loan with Landmark Hotel, Inc. and will survive an assignment of your note to us. We understand that the terms and

provisions of the First Mortgage Real Estate Note and Deed of Trust referred to in 10 above will automatically become operative upon an assignment of the Deed of Trust and Note to us from you.

12. F. Earl Crawford, Jr. and Vestal C. Taylor are the individuals referred to in the Commitment as Earl Crawford and Festal Taylor, respectively.

13. We agree that if the First Mortgage Real Estate Note, referred to us in paragraph 11 above, to be purchased by us, contains the following executed endorsement, to wit:

"Endorsement and Guarantors." The undersigned agree to be jointly and severally liable on all sums of principal and interest that remain unpaid above $4,000,000. It being the intent of the parties that once the loan has been reduced below $4,000,000, this guaranty is to be of no force and effect.

_____(L.S.)
James T. Crawford

_____(L.S.)
Barbara Crawford

_____(L.S.)
Vestal Taylor

_____(L.S.)
F. Earl Crawford, Jr.

Overland Investment, Ltd.
By:_____

ATTEST:_____

the requirements of paragraph numbered 10 of the Commitment will be fully satisfied.

14. The Nondivestature Agreement, a copy of which is attached hereto, when executed by F. Earl Crawford, Jr. will satisfy the condition of the Commitment contained in paragraph numbered 2 of the May 24, 1972 letter referred to above.

Very truly yours,

HOME FEDERAL SAVINGS AND LOAN OF HOLLYWOOD
By: s/ Thomas M. Wohl

CERTIFICATE

In accordance with Rules 16 and 33(1) of the Rules of Practice of the United States Supreme Court, I hereby certify that I have on this 2nd day of November, 1979, filed the required 40 copies of Appellee's motion to dismiss Appellant's appeal and, in the alternative motion to affirm the judgment of the North Carolina courts, and Brief in Support of such Motion, in the office of the Clerk of the United States Supreme Court and have mailed the required three copies of the same to John E. Raper, Jr. and Richard M. Wiggins, McCoy, Weaver, Wiggins, Cleveland & Raper, 222 Maiden Lane, Fayetteville, North Carolina 28302 by depositing same in a United States mail box with first class postage prepaid.

Given under my hand this 2nd day of November, 1979.

Joseph W. Grier, Jr.

Joseph W. Grier, Jr.
GRIER, PARKER, POE, THOMPSON, BERNSTEIN, GAGE & PRESTON
1100 Cameron-Brown Building
Charlotte, N. C. 28204
Telephone: 704 372-6730